

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
) No. SA:08-CR-301
vs.)
) San Antonio, Texas
STEVEN LYNN MOUTON,)
Defendant.)
October 6, 2009
-----)

VOLUME 2 OF 2

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

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9 Government's Exhibit 26 was admitted on Page 165.

10 Government's Exh. 26-A through C were admitted on Page 157.

11 Government's Exh. 28-30 were admitted on Page 175.

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1 (October 6, 2009, defendant present.)

2 THE COURT: Please be seated. Your next witness.

3 MS. BRAUN: Your Honor, the government calls Special
4 Agent Larry Baker.

5 COURTROOM DEPUTY: Would you raise your right hand.

6 (Oath administered to the witness.)

7 COURTROOM DEPUTY: Thank you.

8 *-**-**-**-**-**

9 DIRECT EXAMINATION

10 BY MS. BRAUN:

11 Q. Please state and spell your last name for the record.

12 A. Larry Baker, B-a-k-e-r.

13 Q. Where are you employed?

14 A. I am employed in San Antonio as a special agent with the
15 FBI.

16 Q. How long have you had that employment?

17 A. In January, it will be eleven years.

18 Q. Describe your educational background, please.

19 A. I have a bachelor's of science degree in mechanical
20 engineering.

21 Q. What assignments have you had with the FBI since you
22 started as a special agent?

23 A. I have been assigned as an investigator on public
24 corruption matters, civil rights matters, white-collar, which
25 is predominantly bank fraud cases, and also crimes against

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1 children via the Internet.

2 Q. What is your current assignment?

3 A. The latter, crimes against children via the Internet.

4 Q. How long have you had that assignment?

5 A. Approximately five years.

6 Q. What are your duties and responsibilities in the Cyber
7 Crime Unit?

8 A. I am assigned almost exclusively to investigate matters
9 involving child pornography, the production of, possession,
10 receipt, predominantly focuses on activities via the Internet.
11 That is my primary responsibility. I have collateral duties
12 as a SWAT team operator and also as a fitness coordinator for
13 the San Antonio division.

14 Q. What type of specialized training, if any, have you
15 received in relation to your duties and responsibilities in
16 the Cyber Unit?

17 A. Cyber specific, I have received training with regard to
18 computer systems, how they operate, how they function. I have
19 received child forensic interview training and numerous
20 training courses related to investigative techniques for the
21 Internet.

22 Q. In your capacity as a special agent with the FBI in the
23 Cyber Crimes Unit, do you also provide training to other law
24 enforcement officers in how to investigate cyber crimes?

25 A. I do. I recently concluded a training session in Dallas

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1 for almost, I think approximately 200 individuals related to
2 an investigation we had here in San Antonio.

3 Q. Are you the case agent in the case of the United States
4 versus Steven Mouton?

5 A. I am.

6 Q. What does it mean to be the case agent?

7 A. Case agent means that the FBI has tagged you with lead
8 responsibility for taking a particular matter to its
9 investigative conclusion, determining if a violation of
10 federal law has occurred, when it occurred, where it occurred
11 and, ultimately, who committed that act.

12 Q. And having to sit at counsel table with Ms. Wannarka and
13 I?

14 A. Yes.

15 Q. How was this case initiated?

16 A. This case was initiated upon receipt of information from
17 my squad supervisor, at the time, Chuck Lucas on April 2nd,
18 2008, advising me that the Kendall County Sheriff's Office had
19 provided the FBI with a request for investigative assistance
20 on a matter involving a Boerne resident named Steven Mouton.
21 He provided me with contact information for the Kendall County
22 Sheriff's Office and requested that I contact them and see if
23 the FBI could assist in this matter.

24 Q. Did you do that?

25 A. I did.

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1 Q. When did that take place?

2 A. That took place, I believe, the afternoon of April 2nd,
3 2008, shortly after receiving that information from my
4 supervisor.

5 Q. Who did you meet with?

6 A. Well, at that time, I spoke telephonically with Inspector
7 Kendall Gebauer of the Kendall County Sheriff's Office. He
8 provided me with a brief overview of their investigation, and
9 we set a time to meet in the early morning hours of April 3rd,
10 2008.

11 Q. And did you meet with Investigator Gebauer on the 3rd?

12 A. Yes, ma'am. The early morning hours.

13 Q. What happened during that meeting?

14 A. During that meeting, Inspector Gebauer and other members
15 of the Kendall County Sheriff's Office detailed at length
16 their investigation into Steven Lynn Mouton, specifically,
17 with regard to potential criminal activities involving the
18 production and possession of child pornography, so they
19 provided me with an extensive overview.

20 Specifically, Inspector Gebauer advised that on or
21 about October 18th, 2007, he accompanied two individuals,
22 probation officers to Mr. Mouton's residence at 18 Crystal
23 Circle, Boerne, Texas.

24 And during that meeting, he and the probation
25 officers had observed an image on a laptop computer utilized

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1 by Mr. Mouton that they believed depicted the vagina of
2 Mr. Mouton's then twelve-year-old daughter, Amanda Mouton.
3 And that subsequently, after discovering that image, Mr.
4 Gebauer had obtained the computers and obtained the search
5 warrant for the contents of those computers. He then
6 transported those computers to the San Antonio Police
7 Department for forensic review.

8 Q. The image that they showed you that they found on October
9 18th on the defendant's computer that they believed was Amanda
10 Mouton's private part, is that what is contained in Exhibit 1
11 that has already been entered?

12 A. Yes, ma'am. It is.

13 Q. And did they also go through with you the other images of
14 child pornography that were found both on the defendant's
15 laptop computer and the desktop computer?

16 A. Yes, ma'am. They provided me with a disk, which we
17 examined; actually, two disks, which we examined at that time,
18 which housed all potential suspected child pornography images
19 from both computers, and we reviewed each image.

20 Q. And the images of child pornography that were found on the
21 defendant's desktop computer, are those the ones contained in
22 Exhibit 5?

23 A. I would have to look at that.

24 MS. BRAUN: May I approach, Your Honor?

25 THE COURT: You may.

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1 THE WITNESS: Yes, ma'am, they are.

2 BY MS. BRAUN:

3 Q. And those images are not of Amanda Mouton but other
4 children?

5 A. Yes, ma'am, that is correct.

6 Q. And the images of child pornography that you were shown by
7 Kendall County that were found on the defendant's laptop
8 computer, are those images contained in Government's Exhibit
9 3?

10 A. Yes, ma'am, they are.

11 Q. And the images on the laptop computer contained visual
12 depictions, many, of Amanda Mouton, as well as many other
13 children, minor children; is that correct?

14 A. That is correct.

15 MR. BASILE: Your Honor, I object to the leading
16 questions.

17 THE COURT: That is sustained.

18 BY MS. BRAUN:

19 Q. The images found on the laptop computer, are there images
20 of Amanda Mouton found on the laptop computer?

21 A. Yes, ma'am. Dozens.

22 MR. BASILE: Your Honor, I object to the leading
23 question.

24 THE COURT: She rephrased that. That is overruled.

25 THE WITNESS: Yes, ma'am. There were dozens of

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1 images on the laptop computer of Amanda Mouton, clothed, in a
2 partially clothed state and in a nude state, some of her being
3 sexually assaulted.

4 BY MS. BRAUN:

5 Q. Are there also images of other children besides Amanda
6 Mouton on the laptop computer?

7 A. Yes, ma'am, there are.

8 Q. Do you know approximately how many children are depicted?

9 A. How many different children? I am not aware. I know
10 there are approximately 428 images of suspected child
11 pornography removed from the laptop.

12 Q. What concerns, if any, did Investigator Gebauer express to
13 you when he was asking for your assistance?

14 A. The concerns that he expressed --

15 MR. BASILE: Your Honor, I am going to object under
16 Crawford and under the Sixth Amendment. He testified about
17 what someone else said. That is hearsay. Object to it on
18 those grounds.

19 THE COURT: It is hearsay. Is there any exception?

20 MS. BRAUN: It is not offered for the truth of the
21 matter asserted, only to establish whether or not the FBI was
22 going to provide assistance and in what manner.

23 THE COURT: You are still asking him to have him
24 repeat what Gebauer said. That is sustained. Rephrase your
25 question.

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1 BY MS. BRAUN:

2 Q. What information did you provide to Investigator Gebauer
3 at this meeting on April 3rd about what assistance the FBI
4 could provide?

5 A. After reviewing the images from the laptop computer, a
6 number of the images housed a background that was consistent,
7 according to Inspector Gebauer, of Ms. Mouton's current
8 bedroom, at her 18 Crystal Circle residence. It was my belief
9 that potentially sexual assault was ongoing, as that residence
10 had not been lived in for a very long time. And so we
11 expressed to Inspector Gebauer our absolute intent to pursue
12 the matter federally and to act quickly, so as to prevent any
13 future sexual assaults of Amanda Mouton.

14 Q. And, Agent Baker, is that because, not only were there
15 images of Amanda Mouton found in clothed, partially clothed
16 and in a nude state, but on the defendant's computer, were
17 there images of Amanda Mouton being sexually assaulted by an
18 adult male?

19 A. That is correct. With both -- with a male -- an adult
20 male's penis and what appeared to be an adult male's hand.

21 Q. And based on the FBI's review of the copy of the hard
22 drive, did you have any idea of when those images of Amanda
23 Mouton being sexually assaulted by an adult male were created?

24 MR. BASILE: Your Honor, I am going to object. I
25 don't think he is qualified. He has not been qualified as an

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1 expert in computers to make an opinion with regards to any
2 information contained in that.

3 THE COURT: That is sustained.

4 BY MS. BRAUN:

5 Q. Are you familiar with exif data?

6 A. Yes, ma'am, exif or metadata.

7 Q. What is it?

8 A. It is data that is related to a particular -- to the
9 manufacture of a particular digital image by a photograph. It
10 is data that is not apparent to the naked eye, but with
11 software programs, you can actually extract that information
12 that dictates or -- excuse me -- details what camera made an
13 image, when it was made, potentially, when it was deleted or
14 modified.

15 Q. Does the FBI have that type of software?

16 A. Yes, ma'am.

17 Q. Have you used it?

18 A. Yes, ma'am.

19 Q. When you click on -- technical term, if you have an image
20 on your computer, can you click on properties of that image
21 and receive that metadata?

22 A. At times, yes, ma'am.

23 Q. Did you and other agents do that with some of the images
24 depicting Amanda Mouton in this case?

25 A. We did it with one image that Inspector Gebauer had

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1 believed to be that of an image of Amanda Mouton's vagina that
2 that was discovered on October 18, 2007.

3 Q. Is that the image that is Exhibit No. 1?

4 A. Exhibit No. 1, yes, ma'am.

5 Q. And what information, if any, did you discover when you
6 did that?

7 A. We discovered that a Canon EOS --

8 MR. BASILE: Again, Your Honor, I am going to
9 object. Is this basic information on the computer or is it
10 metadata? He has not had any training or anything that would
11 qualify him as an expert. If the information that he is
12 testifying to is general knowledge, anybody who works on
13 computers knows that information, but not specific to forensic
14 examination of a computer.

15 THE COURT: Come on up.

16 (Bench conference, as follows:)

17 THE COURT: I am confused now by your objection. At
18 first, I understood your objection to be saying that he is not
19 an expert to testify, and I sustained that, and then she laid
20 a predicate for just how a regular FBI agent determines the
21 data of a photo, and she was ready to ask him for the date, I
22 believe, but now your objection was: Well, anybody can do
23 that. So I am kind of confused what the objection is.

24 MR. BASILE: My objection, Your Honor, is that what
25 he is testifying to really requires more than just general

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1 information or basic information of a computer. He has not
2 been qualified as a forensic computer expert. He is giving
3 information as far as files, where they come from, and the
4 questions by Ms. Braun were just general computer information
5 that anybody that has taken Computer 101 would know that, so
6 it is not specific to forensic examinations of computers,
7 which I think is important. His testimony was that these
8 images, all but one were deleted, and that is not something
9 that is rarely accessible to anybody else.

10 MS. BRAUN: This one was not deleted.

11 THE COURT: Yes. We are talking about Exhibit
12 No. 1, I believe.

13 MS. BRAUN: Correct.

14 THE COURT: And what I thought you were going to be
15 asking him is: With regard to Exhibit 1, what is the date of
16 Exhibit 1? And he was going to establish that through the
17 exif program that he ran.

18 MS. BRAUN: Correct. Which, technically, is already
19 in evidence in Exhibit 6, but he also looked at the image and
20 found the data in the manner he just described.

21 THE COURT: Yes. That is overruled.

22 (End of bench conference.)

23 BY MS. BRAUN:

24 Q. Special Agent Baker, what information did you acquire by
25 looking at the metadata of Exhibit No. 1?

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1 A. The information that I acquired is that a Canon EOS
2 Digital Rebel camera had been used to manufacture the image,
3 and that it was manufactured on or about August 2007.

4 Q. In the information that was given to you by the Kendall
5 County Sheriff's Office -- that is the disk they gave you --

6 A. Yes, ma'am.

7 Q. -- did you find any evidence that the defendant, at that
8 time, that the defendant had a Canon EOS Rebel digital camera?

9 A. Actually, we -- myself and Special Agent Ethan Cumming,
10 who was a co-case agent on the case, obtained copies of the
11 hard drives that had been seized from Mr. Mouton's computers
12 by Kendall County in October of 2007.

13 We obtained copies of those hard drives from the San
14 Antonio Police Department and conducted a review of all images
15 present on the laptop. Excuse me. On the hard drives, both
16 the Dell and the laptop. And through those copies of the hard
17 drives, we were able to obtain digital images depicting
18 Mr. Steven Mouton wearing a Canon EOS Digital Rebel camera and
19 associated camera strap around his neck.

20 MS. BRAUN: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MS. BRAUN:

23 Q. Agent Baker, I am showing you what has been marked for
24 identification as Government's Exhibit 27-A, 27-B and 27-C.
25 Do you recognize those?

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1 A. Yes, ma'am. I do.

2 Q. What are they?

3 A. They are three digital images that were present on one of
4 the hard drives that we reviewed that depict Steven Mouton
5 wearing a Canon EOS Digital Rebel and/or associated camera --
6 camera strap.

7 Q. With the exception of the exhibit sticker, are they in the
8 same or substantially the same condition now as when you
9 located them on the hard drive, except they are in hard paper
10 form?

11 A. Yes, ma'am. They are.

12 MS. BRAUN: The government offers Government's
13 Exhibit 27-A through C.

14 MR. BASILE: I have no objection, Your Honor.

15 THE COURT: 27-A through C are admitted.

16 MS. BRAUN: May I publish them to the jury, Your
17 Honor?

18 THE COURT: You may.

19 BY MS. BRAUN:

20 Q. Special Agent Baker, this is Exhibit 27-C. Is that the
21 camera that has been entered into evidence as Exhibit No. 32?

22 A. Yes, ma'am, it is.

23 Q. And Government's Exhibit 27-B, what does that depict?

24 A. That depicts the associated the camera strap for this
25 camera, Government's Exhibit 32.

BAKER - DIRECT

1 Q. And is that the defendant, Steven Mouton, in the image?

2 A. Yes, ma'am, it is.

3 Q. What about Exhibit 27-A? What does that depict?

4 A. It depicts Mr. Steven Mouton wearing Government's Exhibit
5 32, which is the Canon EOS Digital Rebel camera and associated
6 camera strap.

7 Q. Can you tell what is in his hand?

8 A. It appears that it is a plastic sleeve that contains a
9 media card associated with a camera such as this.

10 Q. Similar to the media card that is sitting in front of you
11 that has been introduced into evidence?

12 A. Yes, ma'am. Very similar to Government's Exhibit 7.

13 Q. After your meeting with Inspector Gebauer on April 3rd,
14 what did you do?

15 A. Immediately following the meeting, I contacted the U.S.
16 Attorney's Office and spoke to you, Ms. Braun, and provided
17 you with a short summary of my meeting with Kendall County,
18 and a short summary of the evidence that had been obtained to
19 that point, and some concerns I had regarding the safety of
20 Amanda Mouton. I requested the United States Attorney's
21 Office's concurrence to move forward in an investigation and
22 requested that you open up a prosecutor file.

23 Q. Was that done?

24 A. That was.

25 Q. Was an arrest warrant for Mr. Mouton then obtained?

BAKER - DIRECT

1 A. Yes, ma'am. On or about April 8th, 2008, a federal arrest
2 warrant was obtained via criminal complaint. At that time, a
3 search warrant was obtained for Mr. Mouton's 18 Crystal
4 Circle, Boerne, Texas residence, and a search warrant was
5 obtained for his parents' residence in Devine, Texas.

6 Q. Why were two search warrants obtained at those locations?

7 A. The Devine, Texas search warrant was obtained because
8 Mr. Mouton had been staying at that residence, as was required
9 by another agency, and we also had belief that he was
10 returning to the 18 Crystal Circle, Boerne, Texas residence.
11 So we obtained, "we" being the FBI and the federal system,
12 obtained a search warrant for Boerne, and the state
13 investigators obtained a search warrant for the Devine, Texas
14 location.

15 Q. Were you able to locate the defendant at either one of
16 those residences on the morning of April 9th of 2008?

17 A. No, we were not.

18 Q. Describe what happened that morning.

19 A. On April 9th, 2008, all search warrants and the arrest
20 warrant was attempted to be executed. At approximately 6:00
21 a.m., a search and arrest team traveled to Devine, Texas,
22 where Mr. Mouton was required to be as part of his conditions.
23 He was not --

24 MR. BASILE: Your Honor, I am going to object on
25 that. It is a violation of the motion, Your Honor.

BAKER - DIRECT

1 THE COURT: Overruled.

2 BY MS. BRAUN:

3 Q. You may continue.

4 A. Okay. He was required to be at that residence. He was
5 not at that residence, and so the search warrant was executed,
6 but the arrest warrant could not be executed. A short time
7 later, after failing to locate Mr. Mouton, by either the
8 Boerne or the Devine search and arrest teams, I telephonically
9 contacted Mr. Mouton.

10 Q. What did you say to him?

11 A. I advised Mr. Mouton of my identity, advising that we had
12 a federal arrest warrant for him and requested that he provide
13 me with his current location.

14 Q. What did he tell you?

15 A. He provided no information at first, was reluctant to tell
16 me where he was located, and I advised him that if he didn't
17 provide me with that information, I would consider him a
18 fugitive attempting to flee from justice.

19 Q. Did he then tell you where he was located?

20 A. Yes. He advised that he was at his place of employment, a
21 farm, whose name I cannot recall, but a farm in Boerne, Texas.

22 Q. Were agents able to locate him there?

23 A. No. The efforts to locate him there proved that Mr.
24 Mouton had not been there, was not there and had not been
25 there the morning of April 9th, 2008.

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1 Q. What happened then?

2 A. A short time later, I received a telephonic call from
3 Mr. Mouton, which went to voice mail. I listened to the voice
4 mail. It advised that he was currently with his wife at his
5 lawyer's office outside in a parking lot in Boerne, Texas.
6 And after receiving that message, I was able to establish
7 telephonic contact with Mr. Mouton, and he reiterated the same
8 information. I advised him again to stay put and that I would
9 dispatch FBI agents to his location to effect the arrest.

10 Q. Did that happen?

11 A. That did.

12 Q. When he was arrested at that office, did -- was he asked
13 any questions?

14 A. No. The agents, arresting agents were specifically
15 instructed by me not to ask him any questions, other than
16 questions related to his identity, just so the arrest could be
17 executed effectively.

18 Q. And the FBI agents were instructed to arrest him and then
19 do what with him?

20 A. Special Agent Cumming, the co-case agent, and myself were
21 approximately 45 minutes away at the time of arrest. They
22 were instructed to, again, ask him only identifying questions
23 and then to transport him to the offices of the FBI in San
24 Antonio.

25 Q. Did that happen?

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1 A. That did happen.

2 Q. What happened when he got to the FBI?

3 A. Myself and Agent Cumming greeted Mr. Mouton, identified
4 ourselves, and then placed him in an interview room.

5 Q. How did you identify yourself?

6 A. With credentials that have my picture and -- as well as my
7 title and other verbiage that identifies myself as a special
8 agent with the FBI.

9 Q. And how were you and Agent Cummings dressed when this
10 happens?

11 A. Much like I am today, probably not in pink, but much like
12 I am today, in business attire, as is almost always the case.

13 Q. And was Mr. Mouton brought to an interview room?

14 A. Yes, ma'am, he is.

15 Q. Describe that room.

16 A. Sparsely decorated, has a desk, three chairs, maybe four.
17 It is approximately twelve feet wide, 15 feet long.

18 Q. Describe where people are sitting in the room.

19 A. As you walk in, there is a desk immediately to your left.
20 There is a chair associated with that desk. There a chair
21 placed in front of the desk, where the interviewee is
22 typically placed, and there is a chair to the right, where the
23 co-case agent or co-interviewer typically sits.

24 Q. After you introduce yourself to Mr. Mouton, what do you
25 tell him?

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1 A. I explain to Mr. Mouton that I would like to have an
2 information exchange with him.

3 Q. Do you explain what that is?

4 A. Yes, ma'am. I explain -- the verbiage that I use was, I
5 am going to lay all of my cards out on the table, and I
6 further explained that that meant that I would give Mr. Mouton
7 an opportunity to review all of the evidence that the FBI in
8 Kendall County had amassed in this matter and that, in return,
9 I requested that Mr. Mouton provide an honest answer, if you
10 will, to all of the evidence that we would provide to him,
11 that it would not be adversarial at all, that it would be a
12 respectful exchange of information.

13 Q. How did he respond to that?

14 A. He provided a nod of his head. And then I advised him
15 that I could not speak to him or engage in this information
16 exchange without first reading him his Miranda rights.

17 Q. And before we get to that, what was his demeanor like when
18 you first encountered him, and then as you explained that you
19 are going to lay everything out on the table and you would
20 like some information from him as well?

21 A. He appeared to me to be very calm, very measured,
22 calculated, not jittery, not visibly upset. That was my first
23 interaction with him, so I don't have a lot of data points,
24 but relative to other individuals that we typically interview
25 in this -- these type of matters, he was very calm.

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1 Q. When you told him you couldn't talk to him without
2 advising him of his Miranda rights, those are his rights
3 against self-incrimination; is that correct?

4 A. That is correct.

5 Q. How do you -- does the FBI have a policy on how they
6 advise people of their rights against self-incrimination?

7 A. Yes, ma'am. We are required to read aloud or have the
8 individual read aloud a form that is named FD-395, advice of
9 rights forms, and on that form, it details each Miranda
10 warning.

11 Q. What did you do in this case?

12 A. In this case, we read it to Mr. Mouton.

13 Q. Did he appear to understand what you were reading to him?

14 A. Yes, ma'am, he did.

15 Q. Is there a place on the form for him to sign,
16 acknowledging that he understands his rights?

17 A. Yes, ma'am.

18 Q. And did he do that?

19 A. Yes, ma'am. He did.

20 MS. BRAUN: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MS. BRAUN:

23 Q. I am showing you what has been marked for identification
24 as Government Exhibit 26. Do you recognize that?

25 A. Yes, ma'am. This is the FD-395, advice of rights form

BAKER - DIRECT

1 that was read aloud to Mr. Mouton and then subsequently signed
2 by Mr. Mouton, myself and Special Agent Cumming.

3 Q. Is it in the same condition now, with the exception of the
4 exhibit sticker, that it was when he signed it on April 9th?

5 A. Yes, ma'am, it is.

6 MS. BRAUN: Government offers Exhibit 26.

7 MR. BASILE: I have no objection, Your Honor.

8 THE COURT: 26 is admitted.

9 BY MS. BRAUN:

10 Q. As you went over the rights that Mr. Mouton had and was
11 waiving by agreeing to speak with you, did he ask you any
12 questions about them?

13 A. Yes, ma'am. Mr. Mouton, when we got to the warning where
14 it says, "You may stop answering questions at any time," he
15 looked up and me and said, "So I can, indeed, stop questioning
16 at any moment?"

17 I said: Yes, you can. You never lose that right.
18 Even if you sign the form, you can stop at any time that -- to
19 use the exact words that I gave him: This is not like you see
20 on NYPD Blue, where Andy Sipowicz is using a telephone book
21 to -- during an interview. That the moment you say it's over,
22 it's over.

23 BY MS. BRAUN:

24 Q. How did he react to that?

25 A. He seemed comforted by that and then reached -- leaned

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1 forward and signed the document.

2 Q. How did the conversation start?

3 A. The conversation, like most interviews, started with very
4 innocuous questions, background information regarding
5 Mr. Mouton and his family. He provided me with his
6 educational background, his former places of employment, and
7 then he detailed his family members and their ages.

8 Q. And what information did he give you about his wife and
9 child?

10 A. He advised he was currently married to Margarite or
11 Margarita Mouton, had been for approximately 14 and a half
12 years, that those two had adopted a female named Amanda Mouton
13 in 1997 from an adoption agency in Littleton, Colorado, that
14 Ms. Mouton was originally from China and that her date of
15 birth was February 16th, 1995.

16 Q. Did Mr. Mouton provide information about other children --
17 without getting into any information, does Mr. Mouton have
18 other children?

19 A. Yes, ma'am. He has two adult children.

20 Q. And are those from a previous marriage?

21 A. Yes, ma'am.

22 Q. After going through the background information about his
23 family history and education, did you talk to him about the
24 home visit that was conducted at his Boerne residence in
25 October -- on October 18, 2007?

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1 A. Yes, ma'am. I specifically asked him to explain those
2 events to me, how Kendall County came into possession of his
3 computer systems.

4 Q. What did he tell you?

5 A. He advised me that some time in October of 2007, a female
6 probation officer named Brooke Davis had telephonically
7 contacted him, advising him that it was her intent to engage
8 in a home visit at 18 Crystal Circle, Boerne, Texas, his
9 residence.

10 And then two weeks subsequent to that call,
11 Ms. Davis, a male probation officer, and an individual that he
12 referred to as the Kendall County sheriff actually did visit
13 his residence for an in-home visit.

14 Q. So he explained to you that he got a phone call saying,
15 "We are going to do a home visit," and then shortly thereafter
16 that, a home visit occurred?

17 A. Yes, ma'am. Approximately two weeks after.

18 Q. Did he describe for you what happened during the home
19 visit?

20 A. Yes, ma'am. He advised that the probation officers and
21 the Kendall County sheriff had reviewed his computer systems,
22 and during the review of the laptop computer, an image of a
23 female's vagina appeared.

24 As the male probation officer was reviewing the
25 laptop computer, it appeared, and that he believed that image

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1 to be that of an adult female, as the vagina was, in his
2 words, hairy and swollen.

3 He further advised that the probation officers and
4 the Kendall County sheriff believed that it was Amanda Mouton,
5 but he did not share that belief as, to use his words, Amanda
6 is not that adult-looking.

7 Q. Did he indicate whether or not he had ever seen that image
8 before?

9 A. He advised that --

10 Q. At that time?

11 A. Yes, ma'am. I'm sorry. He advised that he had never seen
12 that image before the male probation officer made it pop up,
13 if you will, on the screen, and that he had no idea how the
14 image had been manufactured.

15 Q. Did he give you, during the interview, at that time, any
16 indication of how he thought it got onto his computer?

17 A. Yes, ma'am. He attributed the appearance of the image
18 potentially to that of the male probation officer, that he --
19 the male probation officer may have even placed it on the
20 laptop computer.

21 Q. Did he indicate to you that his computers, both the laptop
22 and the desktop, were then taken from his house?

23 A. Yes.

24 Q. And as a result of the image being found and the computers
25 being taken, is that when his living conditions changed?

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1 A. Yes. He advised that he was no longer allowed to stay in
2 that residence, and that he had subsequently inhabited a
3 trailer park in the Boerne, Texas area before moving to his
4 parents' residence in Devine, Texas.

5 Q. Did you inquire with Mr. Mouton about any cameras that the
6 family owned or used?

7 A. Yes, ma'am. I specifically asked Mr. Mouton to detail the
8 cameras that the family owned and utilized.

9 Q. And what information did he give you at that time?

10 A. He advised that the family only owned and utilized a Nikon
11 brand Coolpix model camera.

12 Q. Did that comport with information you already had?

13 A. No, ma'am, it did not.

14 Q. Why not?

15 A. I had digital images of Mr. Mouton wearing a Canon EOS
16 Digital Rebel from his hard drives, so --

17 Q. Were you able to determine, Agent Baker, if any of the
18 pornographic images were taken with a Nikon camera?

19 A. I was not able to establish that, no, ma'am.

20 Q. Now, at the time that you are interviewing Mr. Mouton on
21 April 9th, are the search warrants still being executed, both
22 at the house on Crystal Circle that his daughter lived in and
23 his parents' house in Devine, Texas?

24 A. Yes, ma'am, they are.

25 Q. And are you in communication with other agents who are at

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1 those two scenes?

2 A. Yes, ma'am. Myself and Agent Cumming are receiving
3 updates from each of the search sites via our Blackberry
4 communication devices.

5 Q. And during that timeframe, what information are you
6 provided about cameras?

7 A. I am provided with information from the Boerne search team
8 that a Canon EOS Digital Rebel camera had been seized from the
9 18 Crystal Circle residence.

10 Q. Did you pass that information along to Mr. Mouton during
11 the interview?

12 A. Not in that regard. I asked Mr. Mouton if he owned a
13 Canon model or Canon brand camera, and he advised, at that
14 time, that he did, indeed, own one.

15 Q. Did you ask him why he didn't tell you that at the
16 beginning?

17 A. Yes, ma'am. I asked him why he provided false statements
18 to the FBI regarding such an innocuous question. He advised
19 that he did not think that that matter was of importance and
20 that he did not want the FBI to actually seize that camera.

21 Q. Was Mr. Mouton shown Exhibit 27-A during the interview?

22 A. Yes, ma'am, he was. Shortly after advising myself and
23 Agent Cumming that he did, indeed, own a Canon EOS Digital
24 Rebel, he was shown that image.

25 Q. And what conversation took place as you are showing him

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1 the picture of him wearing the Canon EOS camera?

2 A. The conversation that took place was that -- after
3 affirming that it was him wearing that -- a camera, a Canon
4 EOS Digital Rebel camera and associated strap around his neck,
5 the inquiry was made: Is that the same camera that we are
6 going to find at your 18 Crystal Circle residence? And he
7 affirmed that it was.

8 Q. Did he indicate to you who used that camera?

9 A. Yes. He advised that he is the only individual that
10 utilized that camera to manufacture digital photos.

11 Q. Did you indicate to him the significance of that camera?

12 A. Yes, ma'am. We did. We turned the attention back to the
13 image that Inspector Gebauer had located at his residence on
14 the laptop computer on October 18th, 2007. I advised Mr.
15 Mouton that I was aware that a Canon EOS Digital Rebel had
16 been used to manufacture that image and that it had been
17 manufactured on or about August of 2007.

18 Q. As you are explaining the significance of that to him, do
19 you also explain what metadata is?

20 A. Yes, ma'am. I asked him if he understood what metadata
21 was, if he was familiar with it. He advised that he was not,
22 so we go through an explanation on how we were able to
23 ascertain that -- how that -- or when that image was made and
24 what device was actually used to make that image, so that he
25 understood that I was not in any way bluffing him, but

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1 actually providing him with real information.

2 Q. What was his reaction to that?

3 A. He nodded. I don't believe, at that moment, that he spoke
4 any words related to that information, but then I asked him a
5 follow-up question which was: Did he now know how the image,
6 that he had advised earlier that he had no idea how it had
7 been manufactured or had never seen the image that Inspector
8 Gebauer had, indeed, printed or had printed on October 18th,
9 2007, I asked him if he now knew how it was manufactured. And
10 he advised that he did, but provided no further information at
11 that time.

12 Q. So he just said, "Yes," and sat there?

13 A. Yes, ma'am. He advised, "Yes, I know," and left it at
14 that, so we continued the interview.

15 Q. Did he volunteer information, other information about the
16 production of that picture?

17 A. Did he volunteer, at that time, any information?

18 Q. Yes. At that time, did he say anything about his wife?

19 A. Unsolicited, he advised that Margarite Mouton would not
20 have been involved in the manufacture of that image, yes,
21 ma'am.

22 Q. You stated that you continue with the interview. What
23 happens next during the interview?

24 A. The next step of the interview was I actually -- Agent
25 Cumming produced and I provided to Steven Mouton a series of

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1 digital images or printouts from digital images that had been
2 recovered from his laptop computer. The images are of Amanda
3 Mouton in a clothed, partially clothed, clothed -- excuse
4 me -- and nude state, and some of the images depict her sexual
5 assault. It was approximately three dozen images.

6 MS. BRAUN: May I approach, Your Honor?

7 THE COURT: You may.

8 BY MS. BRAUN:

9 Q. Special Agent Baker, I am showing you what has been marked
10 for identification as Government's Exhibit 28, which consists
11 of eleven pages with four pictures per page. Do you recognize
12 that?

13 A. Yes, ma'am, I do.

14 Q. What is it?

15 A. These are images that were recovered from Steven Mouton's
16 Acer laptop computer. They are images, they are printed
17 images from digital images that were once housed on that
18 system, and they are images of Amanda Mouton clothed,
19 partially clothed, fully nude, and being sexually assaulted by
20 what appears to be an adult male.

21 Q. Are those -- is Exhibit 28 in substantially the same
22 condition now as when you showed it to him during your
23 interview on April 9th?

24 A. Yes, ma'am. They are.

25 Q. I am showing you what has been marked for identification

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1 as Government's Exhibit 29 and ask that you take a look at
2 that. It is four pages of pictures with four pictures per
3 page.

4 A. Yes, ma'am.

5 Q. Do you recognize it? What is it?

6 A. These are, again, printed images from digital images that
7 were housed on Steven Mouton's Acer brand laptop computer.
8 They are images that depict Amanda Mouton wearing a cowboy
9 hat, a brown leather belt, cowboy boots, and at times a red
10 handkerchief, and other than that, she is completely nude.

11 Q. Did you discuss those images with the defendant during the
12 interview on April 9th?

13 A. I discussed Government's Exhibit 28, but -- I did discuss
14 Government's Exhibit 29 with Mr. Mouton, but he, at that point
15 in the interview, refused to look at them.

16 Q. Are they in the same or substantially the same condition
17 now as they were during the interview?

18 A. Yes, ma'am. They are.

19 Q. I am showing you what has been marked for identification
20 as Government Exhibit 30 and 31 and ask you to take a look at
21 those. Do you recognize those?

22 A. Yes, ma'am, I do.

23 Q. Are those also images that were shown to and discussed
24 with the defendant during your interview on April 9th of 2008?

25 A. Yes, ma'am, these are.

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1 Q. And are they in the same condition now as they were on
2 that date?

3 A. Yes, ma'am.

4 MS. BRAUN: Government offers Exhibits 28 through
5 31. Do you want to see them?

6 MR. BASILE: Yes, if I could.

7 I have no objection, Your Honor.

8 THE COURT: 28, 29, 30 and 31 are admitted.

9 BY MS. BRAUN:

10 Q. Exhibit No. 28 is a series of images depicting Amanda
11 Mouton; is that correct?

12 A. That is correct.

13 Q. Did you show those to the defendant during the interview?

14 A. Yes, ma'am. We did.

15 Q. Explain how that was done.

16 A. At that point in the interview, again, sticking to the --
17 to my promise to Mr. Mouton to lay all of the cards on the
18 table, if you will, we provided the images to Mr. Mouton for
19 review and asked for a response on how the images had been
20 created and what he knew about the images.

21 Q. What was his reaction when he looked at them?

22 A. Much like it was at the onset of the interview, very calm,
23 very measured. No obvious response.

24 Q. What did he tell you about the images depicted in
25 Exhibit 28?

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1 A. He advised that he had manufactured each of the images
2 with a Canon EOS Digital Rebel, that the images were
3 manufactured at his 18 Crystal Circle, Boerne, Texas
4 residence, and that he had no reason to believe, at least most
5 of the images -- the images were actually shown to him in
6 parts.

7 Q. Explain that.

8 A. Well, the first 34 or so images that are printed on
9 Government's Exhibit 28 appear to be from the same event. The
10 background is the same. The clothing on Amanda Mouton in some
11 of the images is the same. And it was our belief at the time
12 that the images were probably manufactured on or about the
13 same date. The images depict a nightgown, a floral nightgown
14 in a number of the images, and that was our belief, that they
15 had potentially been manufactured at the same time.

16 Q. So the first 34 images in Exhibit 28 are, in your opinion,
17 a series taken at about the same time and the same location of
18 the same person?

19 A. Approximately the same 34. I would have to count each
20 one. But, yes, ma'am, that is approximately 34 images.

21 Q. And is the nightgown that is seen on Amanda Mouton in the
22 first few images and then taken off the same one that she is
23 depicted in in Government's Exhibit 10?

24 A. Is that what is being displayed in Government's Exhibit --

25 Q. Yes.

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1 A. Yes, it is.

2 Q. And is that the same nightgown that she is wearing in
3 Government's Exhibit 11?

4 A. Yes, ma'am, it is.

5 Q. And then does Government Exhibit 12 show Amanda in the
6 same nightgown in her bed, which is the same location that
7 Exhibit 28 were produced?

8 A. Yes, ma'am. It appears to be.

9 MS. BRAUN: May I approach, Your Honor?

10 THE COURT: You may.

11 BY MS. BRAUN:

12 Q. Special Agent Baker, in the 30-some pictures that you just
13 described that depict Amanda Mouton, is Exhibit No. 1 included
14 in that series?

15 A. Yes, ma'am, it is.

16 Q. Was the defendant specifically shown Government's Exhibit
17 30, which is image 428?

18 A. Yes, ma'am. I believe that is an image of an adult male's
19 penis penetrating Amanda Mouton's vagina.

20 Q. Correct.

21 MS. BRAUN: May I publish that image, Your Honor?

22 THE COURT: Yes.

23 BY MS. BRAUN:

24 Q. What was the defendant's reaction to seeing that image?

25 A. His reaction was much like most of the interview. It was

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1 just acknowledgment, calm, collected. No statement at that
2 moment.

3 Q. What did you ask him about that picture?

4 A. I asked him if that was his penis penetrating Amanda
5 Mouton's vagina, and he advised that it was.

6 Q. Did you also show him image 328, which is at the top
7 right -- which is this image right here?

8 A. Yes, ma'am. I did.

9 Q. Did you show him that image during the interview?

10 A. Yes, ma'am. I did.

11 Q. What did you ask him about that image?

12 A. I asked him if those were his fingers and if that was his
13 hand that was penetrating Amanda Mouton's vagina, and he
14 advised that it was.

15 Q. Did you ask or was there conversation about where those
16 images were produced?

17 A. Yes, ma'am. I again asked with what device did he use to
18 manufacture those images and where, and he advised a Canon EOS
19 Digital Rebel, his camera, was utilized by him to produce
20 those images at 18 Crystal Circle, Boerne, Texas.

21 Q. And did he indicate when they were produced?

22 A. He advised that he had no reason to believe that they were
23 not produced at any other time other than August 2007 on a
24 date consistent with that of the image that had been viewed by
25 Inspector Gebauer during the home visit. So he could not

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1 recall the exact date, but he had no reason to believe that
2 they were not all manufactured on the same date in August of
3 2007.

4 Q. Did you also show him another series of images of his
5 daughter that were taken in a different location at a
6 different time?

7 A. I did.

8 Q. There are approximately seven images that belong or appear
9 to belong in that series; is that correct?

10 A. That is correct.

11 Q. Describe what they depict, briefly.

12 A. They depict Amanda Mouton at what appears to be a
13 significantly younger age, two to three years younger than the
14 previous detailed images. They appear -- she appears in a
15 white blouse, almost like a nightgown. Other than that, she
16 is wearing no clothes and, in fact, in some of the images she
17 is not wearing the nightgown.

18 And the images have her basically posing in numerous
19 positions on a white-and-green patterned couch inside a
20 residence that Mr. Mouton later advised was his 219 North
21 Street, Boerne, Texas residence, which is where he lived prior
22 to moving to 18 Crystal Circle.

23 Q. In those images, is the focal point of those images or in
24 some of the images the private parts of Amanda Mouton?

25 A. Yes, ma'am. The focal point is the genital area, the

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1 vaginal area or her anus.

2 Q. Now, on August of 2007, the first series that we saw,
3 Amanda Mouton would have been twelve years old, correct?

4 A. That is correct.

5 Q. So in these images, with the green and white couch, she
6 is, as we said, significantly younger; maybe two to three
7 years younger?

8 A. That is my estimation, yes, ma'am.

9 Q. What did the defendant tell you about how those pictures
10 of Amanda were produced?

11 A. He advised that he had produced each of the images, was
12 not sure exactly what device had been utilized, but that he
13 did produce each of the images at the 219 North Street,
14 Boerne, Texas residence, his residence prior to the 18 Crystal
15 Circle residence.

16 Q. And I want to draw your attention to Exhibit No. 29, which
17 you described as a third series of images depicting Amanda
18 wearing cowgirl attire and nothing covering her genital area.
19 Describe what happened as you attempted to show the defendant
20 those images.

21 A. I retrieved the images from Special Agent Cumming, advised
22 Mr. Mouton that I would like to show him one more series of
23 images. At that point, he advised that he did not want to see
24 any more images.

25 I then explained to Mr. Mouton what the images

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1 depicted, the outfit that Ms. Mouton was wearing, and I
2 further advised him that I did not want to see the manufacture
3 of these images be unfairly attributed to him, if he did not,
4 indeed, manufacture them, and it was my desire to at least let
5 him look at them briefly to see whether he recognized them or
6 not or -- and knew how they were manufactured.

7 Q. Now, can you tell from looking at the images where those
8 were manufactured?

9 A. I can tell through, not directly from this image alone,
10 but from other -- a review of other images from the hard drive
11 that this is Mr. Mouton's previous residence at 219 North
12 Street.

13 Q. In Boerne, Texas?

14 A. In Boerne, Texas, yes, ma'am.

15 Q. How old does Amanda Mouton appear to be in those images?

16 A. I would estimate her age to be seven to eight years old.

17 Q. And when you explained to Mr. Mouton that you didn't --
18 you didn't want to attribute these to him if he didn't take
19 them or had nothing to do with them, what was his reaction?

20 A. He advised that, and to quote him: You know I made the
21 images. I know I made the images. Why do you continue to ask
22 me questions about the images? I made them.

23 Q. What did you do at that point?

24 A. We stopped attempting to show Mr. Mouton any images and
25 turned the interview towards general child pornography

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1 matters.

2 Q. Did Mr. Mouton indicate at that time how long he had been
3 producing child pornography using his daughter?

4 A. Yes, ma'am. He advised that for a number of years he had
5 been producing child pornography images of Amanda Mouton
6 before he ever decided or ever attempted to touch her.

7 Q. By that you mean, he took pictures of her without ever
8 sexually touching her?

9 A. Yes, ma'am.

10 Q. For a while?

11 A. Yes, ma'am.

12 Q. And then, at some point, he began sexually touching her?

13 A. That is correct. And we discussed when that occurred and
14 how many times.

15 Q. What did he tell you about that?

16 A. He advised that he had only had sexual interactions with
17 Amanda Mouton on one occasion, and it was on that occasion
18 that he actually captured that sexual interaction, and he was
19 referring back to the images that were believed to be produced
20 on August 2007, the images with an adult male penis
21 penetrating Miss Amanda Mouton's vagina and the digital
22 penetration.

23 Q. Is that what we saw in Exhibit 30, the one he acknowledged
24 was his penis in his daughter's vagina?

25 A. Yes, ma'am. That is correct. So he advised that it

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1 occurred on one time and he captured that via the digital
2 photography.

3 Q. Special Agent Barack, is that consistent with your review
4 of the metadata of other images seized in this case?

5 A. It is not.

6 Q. Why not?

7 A. Images that were retrieved from a camera indicate that the
8 potential sexual abuse was spread out over multiple events.

9 Q. When -- and I will get back to the camera card, but when
10 the conversation then turned to general child pornography,
11 explain that.

12 A. Essentially, we asked Mr. Mouton general questions related
13 to his involvement in child pornography, how he obtained it,
14 beyond Amanda Mouton, how he obtained it, because we obviously
15 had approximately 400 images from the laptop that did not
16 depict Amanda Mouton, and so we inquired about those images.
17 How did he obtain them? Did he distribute? How did he
18 receive them? How long did he possess them? Things of that
19 nature.

20 Q. What did he tell you?

21 A. He advised that he had been obtaining child pornography
22 via the Internet for a number of years, that this act was
23 cyclical in nature, that he would obtain these images, view
24 them, and after feeling guilt, delete them, and then the
25 process would start over again.

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1 He advised that, at present, he was utilizing his
2 Dell desktop computer and the Internet to obtain the images
3 and then he would subsequently transfer those images to his
4 Acer brand laptop computer for further review.

5 Q. Was the Acer laptop password-protected?

6 A. It was not.

7 Q. Did you talk about that during the interview?

8 A. Yes. He advised that, including the images that he
9 manufactured of Amanda Mouton, these images were just placed
10 openly on his Acer laptop computer which, according to him,
11 Margarite Mouton and Amanda Mouton periodically used or could
12 use, and since they weren't password-protected or encrypted,
13 the question was: Well, weren't you concerned that they would
14 come across these images?

15 Q. What did he say about that?

16 A. He didn't address the concern part, but he said they could
17 have. They could have seen them. They were there and they
18 weren't protected.

19 Q. Knowing that many of the images, at least the ones that
20 were manufactured at the residence at 18 Crystal Circle, were
21 made with the Canon EOS Digital Rebel camera, did you contact
22 Canon?

23 A. Yes, ma'am. Our office did contact Canon.

24 Q. What was the purpose of that?

25 A. Excuse me. Just to establish where the Canon EOS Digital

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1 Rebel camera was actually manufactured.

2 Q. Did you receive a business records affidavit from the vice
3 president and general manager of sales for Canon USA
4 indicating that the Canon camera was not made in the state of
5 Texas?

6 MR. BASILE: Your Honor, I am going to object to
7 this under Crawford and Sixth Amendment. This is testimonial
8 evidence, and to provide it this way by hearsay is -- I object
9 under those rules.

10 THE COURT: The first question is, did you receive?
11 And I haven't received an answer to that, so there is no
12 objectionable question posed at this time. That is overruled.

13 THE WITNESS: Yes, ma'am. I did receive a business
14 affidavit from Canon.

15 MS. BRAUN: May I approach, Your Honor?

16 THE COURT: Yes.

17 BY MS. BRAUN:

18 Q. I am showing you what has been marked for identification
19 as Government's Exhibit 25. Do you recognize that?

20 A. I do.

21 Q. What is it?

22 A. It is entitled affidavit of Elliott Peck, and it is a
23 business records affidavit or an affidavit from Canon
24 establishing the fact that the Canon EOS --

25 MR. BASILE: Your Honor, I am going to object.

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1 THE COURT: Just one second here. You have
2 identified it as a business record. Next question.

3 MS. BRAUN: The government offers Exhibit 25.

4 THE COURT: Everybody come on up.

5 (Bench conference, as follows:)

6 THE COURT: Okay. The objection is to hearsay and
7 lack of confrontation. What is your response?

8 MS. BRAUN: We have given this affidavit, as well as
9 the business records affidavit from Canon, to the defense and
10 it is a business record. It falls outside of hearsay.

11 THE COURT: It is not a business record. He is
12 testifying that Canon is exclusive importer and distributor,
13 and he is testifying that no digital cameras are manufactured
14 in the United States. A business record -- an affidavit
15 proving up business records is an affidavit that says the
16 following attached ten pages are true and correct copies of
17 documents regularly maintained in the course and scope of
18 business. That is not this.

19 MS. BRAUN: I realize that, but when we requested
20 the records from Canon with regard to this particular camera
21 with this serial number, this is what we got in return.

22 THE COURT: Okay.

23 MS. BRAUN: With -- I think with the letter saying
24 this is what we have.

25 THE COURT: What is the necessity of this document?

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1 Is it for the interstate connection?

2 MS. BRAUN: The interstate connection.

3 THE COURT: Haven't you already established that
4 through the --

5 MS. BRAUN: The camera itself?

6 THE COURT: -- the camera itself and the card? The
7 objection is sustained. This is not coming in.

8 (End of bench conference.)

9 BY MS. BRAUN:

10 Q. Agent Baker, the search warrant that was executed at 18
11 Crystal Circle on April 9th of 2008 yielded the Canon camera,
12 correct, that is right there?

13 A. Yes, ma'am. Government's Exhibit 32.

14 Q. And also three media cards; is that correct?

15 A. At least three, yes, ma'am.

16 Q. One of those media cards we heard testimony contained
17 numerous images of child pornography?

18 A. That is correct.

19 Q. Do you know how many images of child pornography were
20 contained on that media card?

21 A. Yes, ma'am. 73.

22 Q. And how do you know that?

23 A. I reviewed.

24 Q. Are those images that were found on the camera card
25 located in Government's Exhibit 8?

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1 A. Yes, ma'am, they are.

2 Q. You testified that you also reviewed the images recovered
3 from both of the defendant's computers, the desktop and the
4 laptop; is that correct?

5 A. That is correct.

6 Q. Were the images of Amanda that were taken at her residence
7 on Crystal Circle found both on the camera card and on the
8 laptop computer?

9 A. Yes, ma'am. The camera card housed all of the images that
10 were found on the laptop computer from that series, so the
11 camera had all of those images plus additional images that
12 were from that series that were not placed on the laptop
13 computer or recovered from the laptop computer.

14 Q. Describe, if you will, some of the additional images that
15 were found on the camera card that were not on the defendant's
16 laptop computer.

17 A. There were additional images of an adult male penis
18 penetrating Amanda Mouton's vagina. There were -- there was
19 an image of what appears to be a plastic cigar holder or
20 sleeve canister placed in Amanda Mouton's vagina. There is an
21 image of a Kleenex or a tissue of some sort placed inside
22 Amanda Mouton's vagina, and I believe that there is an
23 additional image of fingers digitally penetrating Amanda
24 Mouton's vagina.

25 THE COURT: Wait for a question.

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1 BY MS. BRAUN:

2 Q. Sorry. Special Agent Baker, the images on the camera card
3 were all deleted, correct?

4 A. That is correct.

5 Q. What was the date of the deletion?

6 A. For most of the images, because the camera card housed a
7 number of images, but the 73 child pornographic images, all of
8 them showed a deletion date of October 16th, 2007.

9 Q. And that date would have been after the phone call
10 Mr. Mouton got from probation saying, "We are coming to your
11 house," and before the date that they actually showed up at
12 his house?

13 A. According to Mr. Mouton, it would be, yes, ma'am.

14 MS. BRAUN: May I have just a minute, Your Honor?

15 I have nothing further at this time, Your Honor.

16 THE COURT: Mr. Basile.

17 MR. BASILE: May I have a few minutes to confer with
18 my client?

19 THE COURT: Yes.

20 Anybody want to stand and stretch in place? Feel
21 free.

22 *-**-**-**-**-*

23 CROSS EXAMINATION

24 BY MR. BASILE:

25 Q. Good morning, Agent Baker. How are you?

BAKER - CROSS

1 A. Good, sir. Thank you.

2 Q. I just have a few questions about your testimony. When
3 you were in this room, this investigative room, who was all
4 present?

5 A. In the interview room?

6 Q. Yes.

7 A. Myself and Special Agent Cumming.

8 Q. And you said you had picked up Mr. Mouton or he turned
9 himself in at his attorney's office; is that correct?

10 A. He did not turn himself in. He was waiting in the parking
11 lot in a vehicle with his wife at the parking lot where his
12 attorney's office is housed.

13 Q. All right. And who was his attorney?

14 A. I do not know.

15 Q. All right. Did you talk to his attorney at all?

16 A. No.

17 Q. Did you attempt to talk to him?

18 A. No.

19 Q. And did Mr. Mouton represent to you at all that he had
20 retained this attorney or consulted with his attorney?

21 A. When I spoke to Mr. Mouton telephonically the first
22 time -- or, excuse me, the second time, he advised that he was
23 at his attorney's office, did not provide any more information
24 than that. We did not discuss whether he retained him or
25 anything of that nature.

BAKER - CROSS

1 Q. Did he discuss it any more when you took him in to the
2 investigative room?

3 A. No.

4 Q. Now, you said you gave him his Miranda warnings; is that
5 correct?

6 A. That is correct.

7 Q. And one of the warnings is that you have a right to have
8 an attorney; isn't that correct?

9 A. That is correct.

10 Q. And if there is an attorney available, you are not
11 supposed to have any contact with him, are you?

12 A. That is not correct.

13 Q. Well, explain to me what the Miranda rights say.

14 THE COURT: That calls for a legal conclusion. Next
15 question.

16 BY MR. BASILE:

17 Q. At any time, did Mr. Mouton tell you he wanted to stop the
18 interview?

19 A. No.

20 Q. Not once?

21 A. No. He refused to look at the pictures and advised that
22 he didn't want to see any more pictures, and I believe that
23 the interview concluded itself. There were no more questions
24 to be asked.

25 Q. Now, Agent Baker, you testified about a lot of different

BAKER - CROSS

1 images that you have gotten from the Canon and some other
2 camera. All of the images but one were actually deleted,
3 weren't they?

4 A. That is correct.

5 Q. And the only image that wasn't was the one image in
6 Government's Exhibit No. 1; is that right?

7 A. That is correct.

8 Q. And that information, is that something you have personal
9 knowledge of?

10 A. Is the deletion of those images --

11 Q. Yes.

12 A. Yes.

13 Q. And how do you know that?

14 A. How do I know that? I reviewed each forensic report for
15 each image and verified with the forensic examiners the dates,
16 if they were available for deletion or confirmed that the
17 images were deleted or present on the hard drive. And
18 subsequently, I have also reviewed Government's Exhibit 1,
19 resident on the hard drive, not deleted.

20 Q. Do you know when Canon started making this camera?

21 A. Do I know when? No, sir.

22 Q. So you don't know whether actually any other pictures were
23 taken than the ones you talked about?

24 A. Do I know any other images?

25 Q. Yes.

BAKER - CROSS

1 A. By "other," you mean other than the ones not attribute --

2 Q. Other than the ones you testified to.

3 A. Other -- I know, the images attributed to the 18 Crystal
4 Circle, approximately when they were manufactured. The other
5 ones, I have estimates, but no exact dates, no, sir.

6 Q. And during the time that you were interviewing Mr. Mouton,
7 were both of you present, both investigators in the room?

8 A. Yes, sir.

9 Q. At the same time?

10 A. During the questioning, there potentially was a time when
11 we may have retrieved a soda or something for Mr. Mouton that
12 one of us was left there, but we don't question unless two of
13 us are present.

14 Q. Did you make any kind of recording of this?

15 A. We do not record interviews. That is FBI policy.

16 Q. And did you make a video recording or audio recording of
17 any of this?

18 A. It is the FBI policy to record no interview.

19 MR. BASILE: I don't think I have any further
20 questions, Your Honor.

21 THE COURT: Anything further?

22 MS. BRAUN: May we approach briefly?

23 THE COURT: Come on up.

24 (Bench conference, as follows:)

25 MS. BRAUN: If I could have permission to clarify

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1 the attorney question, and just put in there that the
2 attorney's office was not Mr. Basile, and that it was not an
3 attorney related to this case.

4 I am afraid the jury is left with wondering whether
5 the interview was proper, if he did have an attorney, and the
6 attorney was on probation violation, which the Court -- which
7 we haven't gotten into, so without getting into the fact that
8 he is a criminal defendant who was on probation, and that is
9 the reason for the attorney, I don't want the jury misled into
10 thinking he had an attorney on this matter and that the FBI
11 went around that or circumvented that. I am just not sure how
12 to do that without --

13 THE COURT: So your proposed questions are? The
14 office that you went to was not Mr. Basile's and Mr. Bastille
15 was not the attorney?

16 MS. BRAUN: And that the attorney that he -- the
17 attorney's office that he was at was not related to these
18 circumstances. It is related, in the sense of a probation
19 violation, but -- I can go in and explain everything.

20 THE COURT: I agree, Mr. Basile, that part is not
21 clear, and we don't know what that attorney was retained for
22 and what was the purpose of his visit to that location.

23 MS. BRAUN: Well, actually, there was testimony from
24 Sean Hiler that he contacted Wallace Ferguson, who is the
25 attorney, and that he did not represent Mr. Mouton on the new

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1 charges. He would continue to represent him on the 2003
2 offense, but not any new charges.

3 MR. BASILE: How is this relating to the CPS matter?
4 It is a completely different legal proceeding and a different
5 court.

6 THE COURT: I am going to allow you to ask questions
7 about, you know, the attorney's office that you went to to
8 arrest Mr. Mouton was not the offices of Mr. Basile, without
9 anybody thinking Mr. Basile did anything ineffective here, at
10 least for this jury and potential clients. But I mean, I
11 don't see how any -- I don't see any harm on that. Do you
12 have any problem with that?

13 MR. BASILE: No. No problem with --

14 MS. BRAUN: The questions are left with, I think the
15 impression that the FBI has circumvented or ignored the fact
16 that he was represented by counsel.

17 THE COURT: That is why -- I'm sorry. I cut you off
18 on that question. I didn't want to go into the previous
19 probation issues. Let's just stop it at, it wasn't
20 Mr. Basile's office and it wasn't Mr. Basile and stop it
21 there. No further.

22 MS. BRAUN: Okay. My concern, Your Honor, is the
23 way the jury instruction is worded is the jury is sort of
24 invited to consider the voluntariness of the confession, and
25 if they are left with any indication that the FBI circumvented

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1 his right to counsel, I am afraid of how that may play out.

2 THE COURT: Well, tell me what questions you may
3 have.

4 MS. BRAUN: That it wasn't his office, he wasn't
5 representing him at the time, and that he did not have
6 representation with regard to --

7 MS. WANNARKA: -- these charges, and it was on a
8 different matter, that it was a different matter that he had
9 an attorney.

10 MS. BRAUN: That attorney was related to a different
11 matter.

12 THE COURT: But what does it matter? I mean, having
13 the right to an attorney -- if they want to believe, what does
14 it matter whether -- whatever his name is or somebody else --

15 MR. BASILE: He consulted with an attorney was the
16 information that was testified to. We don't know the details
17 of that consultation, so I still think that to state that he
18 wasn't retained, there is no evidence of that. I would object
19 to that.

20 MS. BRAUN: I will just clarify it was not
21 Mr. Basile, and I guess we will let the advice of rights form
22 speak --

23 (End of bench conference.)

24 MS. BRAUN: Thank you, Your Honor.

25

BAKER - REDIRECT

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REDIRECT EXAMINATION

BY MS. BRAUN:

Q. Special Agent Baker, when Mr. Mouton was arrested in the parking lot of a law office, was that the office of Mr. Basile?

A. No, ma'am, it was not.

Q. In fact, Mr. Basile was not representing Mr. Mouton at that time, correct?

A. That is correct.

MS. BRAUN: Thank you.

Nothing further, Your Honor.

THE COURT: Anything based on that?

MR. BASILE: I have no further questions, Your Honor.

THE COURT: You may step down. Thank you, sir.

Any further witnesses from the government?

MS. BRAUN: No, Your Honor. At this time, the government rests.

THE COURT: The government rests.

Ladies and gentlemen, we need to take a slight break, and this is probably a good time to take our morning break, in any event. I will bring you back in as soon as I can.

All rise for the jury.

1 (Jury leaves courtroom.)

2 THE COURT: Please be seated.

3 Are there any motions?

4 MR. BASILE: Yes, Your Honor. I would make a motion
5 for judgment of acquittal on, specifically on 2251. There has
6 been no evidence presented by the government under that
7 section of 2251 that there was an intent under 2251 --

8 THE REPORTER: Counsel, why don't you approach the
9 podium.

10 MR. BASILE: Okay. That's fine.

11 Under 2251, the statute is fairly wordy, but it is
12 our opinion, Your Honor, that it requires proof, which is
13 halfway through the statute, which -- that the person knows or
14 has reason to know that visual depictions will be transported
15 or transmitted in interstate commerce.

16 There has been no evidence of that presented, that
17 any of this was transported or the intent was to transport in
18 interstate commerce. So I would ask the Court under Section
19 2251 for a judgment of acquittal on that, nonsufficient
20 evidence on the legal standard, legal sufficiency and factual
21 sufficiency.

22 And on and under 2252, Your Honor, there has been no
23 actual presentation by anybody with knowledge that the
24 pictures taken were actually of a minor. The one picture that
25 was shown that was not deleted, there has been no medical

1 testimony that picture is actually a minor.

2 The only evidence that actually has been presented
3 was presented by Mr. Mouton's statements that he didn't think
4 it was Amanda, because of the physical characteristics. There
5 have been no witnesses presented that would have the
6 background to do that, and that is one of the requirements
7 under that.

8 And if there is -- all of the other images were
9 deleted, and under that code 2252, if all of the images are
10 deleted, and there are less than three matters that they had,
11 and I would submit to the Court there are only three matters.
12 One was the camera, media card, one was the laptop, and the
13 other was the hard drive.

14 Under a case out of the Ninth Circuit, US v. Laci,
15 that has also been followed in the Fifth Circuit, which I have
16 those cases available for the Court, I would say that is an
17 affirmative defense to 2252, if everything is deleted, there
18 are no images, so I would ask the Court for a judgment of
19 acquittal on that grounds too.

20 THE COURT: You believe you have a case for that?

21 MR. BASILE: For the matters -- Your Honor?

22 THE COURT: No. For the proposition that if it is
23 deleted, there is no material?

24 MR. BASILE: Under the statute, it gives an
25 affirmative defense, Your Honor, if it is deleted or if it is

1 turned over to a law enforcement agency. Everything was
2 deleted but the one image. And I would state to the Court
3 there is no evidence to show that that image is a minor.
4 There has been no medical testimony to back up that
5 conclusion, as presented to the jury.

6 THE COURT: Well, let me tackle Count 2 first. And
7 the question I have for you, Counsel, on that, as I understand
8 your allocution on Count 2, there is no evidence that any
9 individuals depicted in the deleted but restored files are not
10 minors. As I look at Government's Exhibit 3 and --

11 MR. BASILE: Your Honor, just to clarify my
12 argument, it is not any of the ones of the deleted files. It
13 is, the only undeleted picture, there was no proof that it was
14 a minor.

15 Under the section, there is an affirmative defense.
16 If all of the images are deleted, and there are less than
17 three matters, and they are all deleted or turned over to a
18 law enforcement agency. So that is our argument.

19 THE COURT: Well, let me make sure I understand the
20 counts of the indictment. I thought Count 1 of the
21 indictment, the evidence offered by the government is
22 Exhibit 1, a picture depicting a female vagina, and the
23 testimony offered by the case agent is that the defendant
24 admitted that that was a picture of Amanda Mouton, and there
25 is testimony through her birth certificate of her age

1 acknowledging that she is a minor under the statute. So what
2 am I missing there?

3 MR. BASILE: Your Honor, I am not denying that
4 Amanda Mouton is a minor. The birth certificate states that,
5 but they did not provide any evidence. Maybe your
6 recollection of the evidence is different than mine. The
7 testimony that just came out from the FBI agent is that
8 Mr. Mouton denied that that was his daughter, that one
9 picture, and said that it didn't look like his daughter
10 because of the physical characteristics.

11 There has been no medical testimony, testimony of
12 any type of medical procedures or medical -- such as the
13 Tanner stages or that type of information that would give
14 information to us to know what age that picture shows of a
15 child.

16 THE COURT: Your response?

17 MS. BRAUN: Your Honor, the testimony was Mr. Mouton
18 originally said that was an adult vagina. He later then
19 looked at that specific image, as well as the one where he is
20 digitally penetrating her and where he has his penis in her
21 vagina, and said: Yes, that is me, and that is her.

22 And based on the birth certificate and the metadata,
23 the government has proven that she was only twelve years old
24 at the time that those were taken.

25 THE COURT: Yes. That is my recollection of the

1 testimony as well.

2 Are there any other -- let me take these things
3 separately. With regard to Count 2, are there any other
4 grounds for the motion?

5 MR. BASILE: No, Your Honor. Just the grounds that
6 I have already stated to the Court.

7 THE COURT: Okay. Yes. With regard to Count 2, the
8 motion is denied.

9 Now, with regard to Count 1, my understanding of
10 your motion is that you are arguing that -- and you are not
11 conceding, but if that was a picture taken of Amanda Mouton, I
12 understand your argument to say that if the defendant took the
13 picture and if it is Amanda Mouton, there has been no evidence
14 to suggest that that picture had been transported in
15 interstate commerce or intended to be transported in
16 interstate commerce.

17 MR. BASILE: That is correct, Your Honor.

18 THE COURT: Okay. Now, let me hear the legal
19 argument on that.

20 MS. BRAUN: Your Honor, jurisdiction can be
21 established in a production case three ways. One, the image
22 can actually be transported in interstate commerce. Two, the
23 picture can be taken with the intent to transport it in
24 interstate commerce. Or, three, it can be taken or produced
25 using materials that were transported in interstate commerce.

1 In this case, the camera, the camera card, the Dell
2 hard drive, and the Acer hard drive were all manufactured in
3 other countries, so all of them that were used to produce
4 these images of Amanda traveled in interstate and foreign
5 commerce.

6 The jurisdictional nexus is in the alternative:
7 Either they were shipped or they were taken with the intent to
8 be shipped or they were produced using materials that were
9 shipped.

10 THE COURT: One second. Let me reread 2251-A.

11 MS. BRAUN: And, Your Honor, I believe the language
12 of 2251-A was recently changed or was changed in October of
13 2008, so it would be the language before that, to make it even
14 more confused.

15 MR. BASILE: And, Your Honor, just for the Court's
16 knowledge, I have done some legal research, and I have not
17 found a case, per se, on it. In the Fifth Circuit, I did find
18 a case, U.S. v. Runyan, 290 Federal 3d 223, where this exact
19 issue went up to the Fifth Circuit.

20 They did not decide the issue because they said in
21 that case there was some evidence that the images had been
22 transported or intended to be transported in interstate
23 commerce. That was an issue that went up and has not been
24 ruled upon, that I can find, Your Honor.

25 THE COURT: It is the government's position that I

1 am looking at the version of 2251 that was effective from
2 July 27, 2006 to October 7, 2008; is that correct?

3 MS. BRAUN: Correct.

4 THE COURT: That section, as it then read, reads:
5 Any person who employs, uses, persuades, induces, entices or
6 coerces any minor to engage in or who has a minor assist any
7 other person to engage in or who transports any minor in
8 interstate or foreign commerce or in any territory or
9 possession of the United States with the intent that such
10 minor engage in any sexually explicit conduct for the purpose
11 of producing any visual depiction of such conduct shall be
12 punished as provided under subsection E, if such person knows
13 or has reason to know that such visual depiction will be
14 transported in interstate or foreign commerce or mail, if that
15 visual production was produced using materials that had been
16 mailed, shipped or transported in interstate or foreign
17 commerce by any means, including by computer, or if such
18 visual depiction has actually been transported in interstate
19 or foreign commerce or mailed.

20 MS. BRAUN: Your Honor --

21 THE COURT: The grammar in there is pretty -- let's
22 just put it this way. There are a heck of a lot of commas in
23 that paragraph. And with a lot of those paragraphs and those
24 commas, it appears that, my reading, that the first part, the
25 intent to transport the material in interstate commerce is a

1 first prerequisite to the rest of it that follows.

2 MS. BRAUN: I don't believe that is the law, Your
3 Honor. I would request a short period of time to look that
4 up. I did not get Mr. Basile's objections to the jury
5 instructions until this morning and have not had time to look
6 that up specifically, but I know this issue came up in a case
7 I did in the Eighth Circuit, which did go up on appeal. I
8 believe they addressed this issue, but it was a long time ago,
9 and in that case, it was just produced using materials.

10 MR. BASILE: Your Honor --

11 THE COURT: You are citing me to 290 F 3d 223? If
12 you a copy for me, that would be great.

13 MR. BASILE: I have one copy, Your Honor, which the
14 Court can have.

15 THE COURT: That's okay. I will print out one when
16 we take our break. Did I get the cite right?

17 MR. BASILE: 290 F 3d 223, that is correct.

18 THE COURT: And what is it called?

19 MR. BASILE: U.S. v. Runyan, R-u-n-y-a-n. It is a
20 2002 case, Your Honor. That's the only one I could find. And
21 in regards -- Your Honor, I did just provide the jury
22 instructions to them this morning, but this has been a
23 discussion that we have had prior by e-mails, is the
24 difference in our opinion on this statute and how it is
25 interpreted.

1 THE COURT: Okay. I am not faulting you all, but in
2 in the future, if we think we are going to have a fight like
3 this on jury charges on a legal question, that would be nice
4 if you all clued me in earlier on. That way, I can be doing
5 research beforehand, so now I am doing research on the run.

6 While I am researching this point and we take a
7 break, where are we at? Is the defendant going to put on any
8 witnesses?

9 MR. BASILE: Let me just ask my client real quick,
10 Your Honor.

11 No, Your Honor.

12 THE COURT: Okay. So the defendant intends to rest?

13 MR. BASILE: Yes, Your Honor.

14 THE COURT: With that said, then, as I continue to
15 look at this point, are there any objections to the Court's
16 instructions to the jury by the government?

17 MS. BRAUN: No, Your Honor.

18 THE COURT: Any objections from the defense?

19 MR. BASILE: The only objection, Your Honor, would
20 be the proposals that I submitted in my request, which is
21 basically similar to my judgment for acquittal that I just
22 argued. I would like to have those submitted to the jury as
23 an issue, if the Court doesn't rule on it legally.

24 THE COURT: Yes. I believe I prepared a correct
25 version of the Court's instructions, so any tendered

1 instructions that you want are denied that I have not already
2 incorporated, and I will continue to look at Count 1 of the
3 indictment.

4 Let's all go ahead and take a break. I will conduct
5 further research, and let's try to gather back in about 30
6 minutes.

7 (Brief recess.)

8 (Jury not present.)

9 THE COURT: Thank you. Please be seated.

10 Any argument from the government?

11 MS. BRAUN: Yes, Your Honor. The statute as
12 written, both then and now, I believe contemplates
13 jurisdiction in three ways: Either sending the images in
14 interstate commerce; intending to; or producing them with
15 materials that have traveled in interstate commerce. And
16 United States versus Sharpley, which is 399 F 3d 123 --

17 THE COURT: Does anybody have a copy for me or --

18 MS. BRAUN: I do. It is a Second Circuit case. And
19 United States vs. Mugan.

20 MS. WANNARKA: That is --

21 MS. BRAUN: I have both of them for him.

22 Address the constitutionality of 18 USC 2251-A. And
23 in each of them, they talk about allowing a conviction for
24 production of child pornography based solely on materials that
25 have been transported in interstate commerce, which makes

1 sense, because otherwise, you are combining two jurisdictional
2 elements. Otherwise, it is: You either send the materials in
3 interstate commerce or you intend to use interstate commerce
4 and they are produced with materials that traveled in
5 interstate commerce. That would be a double connection to
6 interstate commerce.

7 So those cases -- so it makes sense that the statute
8 is read as three prongs, three potential prongs to get to
9 federal jurisdiction.

10 And both of those cases, and I think -- I only
11 glanced at the Mugan case as I was running over here from the
12 Federal Building, but it seems to discuss that the issue of
13 whether you can use materials that were produced or the issue
14 of whether you can use materials that have traveled in
15 interstate commerce has been addressed and accepted by other
16 circuits, including the Fifth.

17 And so it seems clear from that that just having
18 materials like the camera, the camera card, and both hard
19 drives, that have clearly traveled in interstate and foreign
20 commerce, is sufficient jurisdiction, and that to add the
21 defendant's requested language that they actually be
22 transported is putting an undue burden on the government.

23 There are three different ways to establish
24 jurisdiction. We have done that with the first way.

25 THE COURT: Any further argument?

1 MS. BRAUN: And I believe Mr. Basile had the Mugan
2 case, which sets that forth.

3 MR. BASILE: Yes, Your Honor. I had the Mugan case,
4 and even told them about it this morning, that I had one that
5 seemed to -- might have addressed it in a different circuit,
6 not in the Fifth Circuit. And the only Fifth Circuit case is
7 the one I handed you, which hasn't really addressed that
8 issue -- discussed it, so I wasn't representing to the Court
9 as far as this Circuit made a ruling on it.

10 It is still my opinion, Your Honor, that just
11 reading of the statute, and we are supposed to read the
12 statute and the words that they have and not try to impose
13 anything else, that it seems to be a conjunctive requirement
14 on the statute, the way it is worded.

15 It doesn't say or --

16 (Counsel not speaking clearly.)

17 THE REPORTER: Counsel, you are losing me. If you
18 will slow down.

19 MR. BASILE: It doesn't say "or" before the -- if
20 they have knowledge, so that would mean to me, Your Honor,
21 that that is required. If they wanted to say something other,
22 they would put an "or" in there or some kind of disjunctive
23 language to show that.

24 Otherwise, I think the intent, if it is not -- it
25 becomes a state matter and, of course, the state can

1 prosecute, if they decide, on child pornography too, if it is
2 not transported -- I don't think the federal court has
3 jurisdiction, Your Honor.

4 THE COURT: Yes. With regard to 2251-A, as it
5 existed between '06 and '08, the statute that the government
6 seeks prosecution under in this offense, the Court reads it as
7 follows: Any person, one, who employs, uses, persuades,
8 induces, entices or coerces any minor; or, two, who has a
9 minor assist any other person to engage in; or, three, who
10 transports any minor in interstate or foreign commerce with
11 the intent that such a minor engage in any sexually explicit
12 conduct, for the purpose of producing any visual depiction of
13 such conduct, shall be punished as provided under subsection
14 E, one, if such person knows or has reason to know that such
15 visual depiction will be transported in interstate or foreign
16 commerce or mailed; two, that visual depiction was produced
17 using materials that had been mailed, shipped or transported
18 in interstate or foreign commerce by any means, including by
19 computer -- and then this is how I read the construction.
20 Then the statute reads "or." So, then, three, if such visual
21 depiction has actually been transported in interstate or
22 foreign commerce or mailed.

23 So under the statute's disjunctive, which has "or"
24 at the very end, it leads me to read that there are three ways
25 to violate this statute, and that the government is arguing

1 the second means, if that visual depiction was produced using
2 materials that have been mailed, shipped or transported in
3 interstate or foreign commerce by any means, which includes
4 the flash card, *Mugan*, the United States versus *Mugan*,
5 *M-u-g-a-n*, 394 F 3rd 1016, Eighth Circuit, 2005, stands for
6 the proposition that, in that case, where the subject child
7 pornography was produced with materials transported in
8 interstate commerce and the evidence in that case included
9 proof that the offending images were stored on a digital
10 memory card previously transported in interstate commerce,
11 that was sufficient to affirm the conviction.

12 In addition to *Mugan*, the government provides, and I
13 also independently found United States versus *Sharpley*, 399 F
14 3rd 123, out of the Second Circuit in 2005. The Court's
15 independent research also found United States versus *Hoggard*,
16 *H-o-g-g-a-r-d*, 254 F 3rd 744; and an Eighth Circuit case in
17 2001, United States versus *Grimmett*, *G-r-i-m-m-e-t-t*, 439 F
18 3rd, 1263, Tenth Circuit, 2006; and United States versus
19 *Holston*, *H-o-l-s-t-o-n*, 343 F 3rd 83, Second Circuit, 2003;
20 all for the proposition of the constitutionality of this
21 statute, albeit under slightly differing facts than the case
22 we have here.

23 The Court relies upon *Sharpley* for the proposition
24 that the motion for acquittal ought to be denied.

25 I take note of your case in *Runyan*, which affirmed

1 on different grounds out of the Fifth Circuit, and the
2 argument in the sufficiency of the evidence challenge in
3 Runyan dealt with whether or not there was sufficient intent
4 to transport in interstate commerce the photos, which is not
5 the issue that we have here.

6 Your objections are noted, overruled, and the Count
7 1 will be presented to the jury for its consideration.

8 Anything else that we need to take up before we
9 bring in the jury?

10 MS. BRAUN: Nothing from the government, Your Honor.

11 MR. BASILE: No, Your Honor.

12 THE COURT: How much time does the government want
13 for closing?

14 MS. BRAUN: We would anticipate 20 to 30 minutes.

15 THE COURT: Do you want me to give you a five-minute
16 warning, ten-minute warning? What do you want?

17 MS. BRAUN: A ten-minute warning is fine.

18 THE COURT: And how much time does defendant want?

19 MR. BASILE: Probably need maybe 15 minutes, Your
20 Honor. 20 at the most.

21 THE COURT: Okay.

22 MR. BASILE: Your Honor, has there been actually an
23 official charge prepared?

24 THE COURT: Yes. Let's distribute the copies to the
25 attorneys.

1 Oh. I have extra copies here, don't I? Here you
2 go. Do you have all of the copies for the jury?

3 Why don't you be prepared to hand them out when they
4 come in. They will need the jury charge, they will need a
5 copy of the verdict form and the indictment.

6 Are we prepared for the jury to come in?

7 MS. BRAUN: Yes, Your Honor.

8 MR. BASILE: Yes, Your Honor.

9 THE COURT: Bring them in.

10 MR. BASILE: My objections are noted, as far as what
11 I proposed --

12 THE COURT: Yes.

13 MR. BASILE: -- from my submissions?

14 THE COURT: Yes. All of your tendered requests that
15 I did not already incorporate, your objections are noted but
16 overruled.

17 COURTROOM SECURITY OFFICER: All rise.

18 (Jury enters courtroom.)

19 THE COURT: Please be seated.

20 Does the defendant rest?

21 MR. BASILE: The defendant rests, Your Honor.

22 THE COURT: Ladies and gentlemen, the government has
23 rested and the defendant has rested. Now, you have heard all
24 of the evidence you are going to hear in this case. It is my
25 job at this time now to instruct you on what rules will apply

1 in your deliberations, and then after I give you the Court's
2 instruction, then we will recognize the attorneys for their
3 closing arguments.

4 You should have in front of you three documents, one
5 entitled Court's Instructions to the Jury, a second one being
6 the indictment, and the third one being a verdict form. Does
7 everybody have all three?

8 Okay. I am going -- it is my obligation to read
9 this out loud to you. As a courtesy to you all, I have
10 provided you a written copy. That way, you can follow along.
11 I would suggest you do so. It gets a bit long and winded.

12 Members of the Jury:

13 In any jury trial there are, in effect, two judges.
14 I am one of the judges; you, the jury, are the other judge.
15 It is my duty to preside over the trial and to decide what
16 evidence is proper for your consideration. It is also my duty
17 now, at the end of the trial, to explain to you the rules of
18 law that you must follow and apply in arriving at your
19 verdict.

20 First, I will give you some general instructions
21 that apply in every case, such as instructions about burden of
22 proof and how to judge the believability of witnesses. Then I
23 will give you some specific rules of law about this particular
24 case, and finally I will explain to you the procedures you
25 should follow in your deliberations.

1 You, as jurors, are the judges of the facts. But in
2 determining what actually happened - that is, in reaching your
3 decision as to the facts - it is your sworn duty to follow all
4 of the rules of law as I explain them to you.

5 You have no right to disregard or give special
6 attention to any one instruction, or to question the wisdom or
7 correctness of any rule I may state to you. You must not
8 substitute or follow your own notion or opinion as to what the
9 law is or ought to be. It is your duty to apply the law as I
10 explain it to you, regardless of the consequences.

11 It is also your duty to base your verdict solely
12 upon the evidence that was admitted during trial, without
13 prejudice or sympathy. That was the promise you made and the
14 oath you took before being accepted by the parties as jurors,
15 and the parties have the right to expect nothing less.

16 The indictment is simply a description of the charge
17 made by the government against the defendant. It is not
18 evidence of guilt. Indeed, the defendant is presumed by the
19 law to be innocent.

20 The law does not require a defendant to prove his
21 innocence or produce any evidence at all. The government has
22 the burden of proving the defendant's guilty beyond a
23 reasonable doubt, and if it fails to do so, you must acquit
24 the defendant.

25 While the government's burden of proof is a strict

1 or heavy burden, it is not necessary that the defendant's
2 guilt be proved beyond all possible doubt. It is only
3 required that the government's proof exclude any "reasonable
4 doubt" concerning the defendant's guilt.

5 A "reasonable doubt" is a doubt based upon reason
6 and common sense after careful and impartial consideration of
7 all the evidence in the case. Proof beyond a reasonable
8 doubt, therefore, is proof of such a convincing character that
9 you would be willing to rely and act upon it without
10 hesitation in the most important of your own affairs.

11 As I told you earlier, it is your duty to determine
12 the facts. In doing so, you must consider only the evidence
13 presented during the trial, including the sworn testimony of
14 the witnesses and the exhibits. Remember that any statements,
15 objections, or arguments made by the lawyers are not evidence.
16 The function of the lawyers is to point out those things that
17 are most significant or most helpful to their side of the
18 case, and in so doing to call your attention to certain facts
19 or inferences that might otherwise escape your notice. In the
20 final analysis, however, it is your own recollection and
21 interpretation of the evidence that controls in the case.
22 What the lawyers say is not binding upon you.

23 During the trial I sustained objections to certain
24 questions and exhibits. You must disregard those questions
25 and exhibits entirely. Do not speculate as to what the

1 witness would have said if permitted to answer the question or
2 as to the contents of an exhibit.

3 Also, certain testimony or other evidence has been
4 ordered stricken from the record and you have been instructed
5 to disregard this evidence. Do not consider any testimony or
6 other evidence which has been stricken in reaching your
7 decision. Your verdict must be based solely on the legally
8 admissible evidence and testimony.

9 Also, do not assume from anything I may have done or
10 said during the trial that I have any opinion concerning any
11 of the issues in this case. Except for the instructions to
12 you on the law, you should disregard anything I may have said
13 during the trial in arriving at your own findings as to the
14 facts.

15 While you should consider only the evidence, you are
16 permitted to draw such reasonable inferences from the
17 testimony and exhibits as you feel are justified in the light
18 of common experience. In other words, you may make deductions
19 and reach conclusions that reason and common sense lead you to
20 draw from the facts which have been established by the
21 evidence.

22 You should not be concerned about whether the
23 evidence is direct or circumstantial. "Direct evidence" is
24 the testimony of one who asserts actual knowledge of a fact,
25 such as an eye witness. "Circumstantial evidence" is proof of

1 a chain of events and circumstances indicating that something
2 is or is not a fact. The law makes no distinction between the
3 weight you may give to either direct or circumstantial
4 evidence.

5 I remind you that it is your job to decide whether
6 the government has proved the guilt of the defendant beyond a
7 reasonable doubt. In doing so, you must consider all of the
8 evidence. This does not mean, however, that you must accept
9 all of the evidence as true or accurate.

10 You are the sole judges of the credibility or
11 "believability" of each witness and the weight to be given the
12 witness's testimony. An important part of your job will be
13 making judgments about the testimony of the witnesses,
14 including the -- testimony of the witnesses, and that should
15 be period. Please disregard "including the defendant who
16 testified in this case."

17 You should decide whether you believe all or any
18 part of what each person had to say, and how important that
19 testimony was. In making that decision I suggest that you ask
20 yourself a few questions: Did the person impress you as
21 honest? Did the witness have any particular reason not to
22 tell the truth? Did the witness have a personal interest in
23 the outcome of the case? Did the witness have any
24 relationship with either the government or the defense? Did
25 the witness seem to have a good memory? Did the witness

1 clearly see or hear the things about which he testified? Did
2 the witness have the opportunity and ability to understand the
3 questions clearly and answer them directly? Did the witness's
4 testimony differ from the testimony of other witnesses? These
5 are a few of the considerations that will help you determine
6 the accuracy of what each witness said.

7 Your job is to think about the testimony of each
8 witness you have heard and decide how much you believe of what
9 each witness had to say. In making up your mind and reaching
10 a verdict, do not make any decisions simply because there were
11 more witnesses on one side than on the other. Do not reach a
12 conclusion on a particular point just because there were more
13 witnesses testifying for one side on that point.

14 The law does not compel a defendant in a criminal
15 case to take the witness stand and testify, and no presumption
16 of guilt may be raised, and no inference of any kind may be
17 drawn from the choice of a defendant not to testify. You
18 shall not consider the defendant's failure to testify for any
19 purpose during your deliberations.

20 During the trial, you heard the testimony of Michael
21 Stark and Charlie Cox, who have expressed opinions concerning
22 computer forensics. If scientific, technical, or other
23 specialized knowledge might assist the jury in understanding
24 the evidence or in determining a fact in issue, a witness
25 qualified by knowledge, skill, experience, training, or

1 education may testify and state an opinion concerning such
2 matters.

3 Merely because such a witness has expressed an
4 opinion does not mean, however, that you must accept this
5 opinion. You should judge such testimony like any other
6 testimony. You may accept it or reject it, and give it as
7 much weight as you think it deserves, considering the
8 witness's education and experience, the soundness of the
9 reasons given for the opinion, and all other evidence in the
10 case.

11 You are here to decide whether the government has
12 proved beyond a reasonable doubt that the defendant is guilty
13 of the crime charged. The defendant is not on trial for any
14 act, conduct, or offense not alleged in the indictment.
15 Neither are you concerned with the guilt of any other person
16 or persons not on trial as a defendant in this case, except as
17 you are otherwise instructed.

18 You will note that the indictment charges that the
19 offense was committed on or about a specified date. The
20 government does not have to prove that the crime was committed
21 on an exact date, so long as the government proves beyond a
22 reasonable doubt that the defendant committed the crime on
23 dates reasonably near the dates stated in the indictment.

24 If the defendant is found guilty by unanimous vote,
25 it will be my duty to decide what the punishment will be. You

1 should not be concerned with punishment in any way. It should
2 not enter your consideration or discussion.

3 A separate crime is charged in each count of the
4 indictment. Each count, and the evidence pertaining to it,
5 should be considered separately. The fact that you may find
6 the defendant guilty or not guilty as to one of the crimes
7 charged should not control your verdict as to any other.

8 Count One.

9 Title 18, USC, Section 2251(a) makes it a crime to
10 knowingly employ, use, persuade, induce, entice, or coerce a
11 minor to engage in sexually explicit conduct for the purpose
12 of producing a visual depiction of such conduct. In order for
13 the defendant to be found guilty of that charge, the
14 government must prove each of the following elements beyond a
15 reasonable doubt:

16 First, that in or about August 2007 through October
17 2007, the dates charged in Count I of the indictment, the
18 defendant knowingly employed, used, persuaded, induced,
19 enticed, or coerced a minor, CV1, to engage in sexually
20 explicit conduct;

21 Second, that the defendant did so with the purpose
22 of producing a visual depiction of such conduct; and

23 Third, that the visual depiction was produced using
24 materials that had been mailed, shipped, or transported in
25 interstate and foreign commerce.

1 You have heard evidence of more than one visual
2 depiction involved in the offense. You must agree unanimously
3 as to which visual depiction was produced.

4 The term "minor" means any person under the age of
5 18 years.

6 The term "sexually explicit conduct" means actual
7 or simulated:

8 A) sexual intercourse, including genital-genital,
9 oral-genital, anal-genital, or oral-anal contact, whether
10 between persons of the same or opposite sex; bestiality;
11 masturbation; sadistic or masochistic abuse; or lascivious
12 exhibition of the genitals or pubic area of any person.

13 Whether a visual depiction of the genitals or pubic
14 area constitutes a lascivious exhibition requires a
15 consideration of the overall content of the material. You may
16 consider such factors as 1) whether the focal point of the
17 picture is on the minor's genitals or pubic area; 2) whether
18 the setting of the picture is sexually suggestive, that is, in
19 a place or pose generally associated with sexual activity; 3)
20 whether the minor is depicted in an unnatural pose or in
21 inappropriate attire, considering the age of the minor; 4)
22 whether the minor is fully or partially clothed, or nude; 5)
23 whether the picture suggests sexual coyness or a willingness
24 to engage in sexual activity; 6) whether the picture is
25 intended or designed to elicit a sexual response in the

1 viewer; 7) whether the picture portrays the minor as a sexual
2 object; and 8) the caption on the picture.

3 It is for you to decide the weight or lack of weight
4 to be given to any of these factors. A picture need not
5 involve all of these factors to constitute a lascivious
6 exhibition of the genitals or pubic area.

7 The term "interstate commerce" means commerce or
8 travel between one state, territory, or possession of the
9 United States and another state, territory, or possession of
10 the United States, including the District of Columbia.

11 The term "foreign commerce" means commerce or travel
12 between any part of the United States, including its
13 territorial waters, and any other country, including its
14 territorial waters.

15 Count Two.

16 Title 18, USC, Section 2252(a)(4)(B) makes it a
17 crime to knowingly possess material which contains child
18 pornography. In order for the defendant to be found guilty of
19 that charge, the government must prove each of the following
20 elements beyond a reasonable doubt:

21 First, that on or about October 18, 2007, the date
22 charged in Count II of the indictment, the defendant knowingly
23 possessed a computer which contained at least one visual
24 depiction of child pornography;

25 Second, that the defendant knew that the visual

1 depiction or depictions were of a minor engaging in sexually
2 explicit conduct; and

3 Third, that the visual depictions were produced
4 using materials that had been mailed, shipped or transported
5 in interstate or foreign commerce, including by computer.

6 You have heard evidence of more than one visual
7 depiction involved in the offense. You must agree unanimously
8 as to which visual depictions the defendant possessed.

9 The terms "minor," "sexually explicit conduct,"
10 "interstate commerce," and "foreign commerce" have the same
11 meanings as previously provided.

12 The term "child pornography" means any visual
13 depiction, including any photograph, film, video, picture, or
14 computer or computer-generated image or picture, whether made
15 or produced by electronic, mechanical, or other means, of
16 sexually explicit conduct, where

17 (a) the production of such visual depiction involves
18 the use of a minor engaging in sexually explicit conduct;

19 (b) such visual depiction is a digital image,
20 computer image, or computer-generated image that is, or is
21 indistinguishable from, that of a minor engaging in sexually
22 explicit conduct; or

23 (c) such visual depiction has been created, adapted,
24 or modified to appear that an identifiable minor is engaging
25 in sexually explicit conduct.

1 The word "knowingly," as that term has been used
2 from time to time in these instructions, means that the act
3 was done voluntarily and intentionally, not because of
4 accident or mistake.

5 In determining whether any statement, claimed to
6 have been made by a defendant outside of court and after an
7 alleged crime has been committed, was knowingly and
8 voluntarily made, you should consider the evidence concerning
9 such a statement with caution and great care, and should give
10 such weight to the statement as you feel it deserves under all
11 the circumstances.

12 You may consider in that regard such factors as the
13 age, sex, training, education, occupation, and physical and
14 mental condition of the defendant, his treatment while under
15 interrogation, and all the other circumstances in evidence
16 surrounding the making of the statement.

17 To reach a verdict, whether it is guilty or not
18 guilty, all of you must agree. Your verdict must be unanimous
19 as to the count listed on the indictment. Your deliberations
20 will be secret. You will never have to explain your verdict
21 to anyone.

22 It is your duty to consult with one another and to
23 deliberate in an effort to reach agreement if you can do so.
24 Each of you must decide the case for yourself, but only after
25 an impartial consideration of the evidence with your fellow

1 jurors.

2 During your deliberations, do not hesitate to
3 reexamine your own opinions and change your mind if convinced
4 that you were wrong. But do not give up your honest beliefs
5 as to the weight or effect of the evidence solely because of
6 the opinion of your fellow jurors, or for the mere purpose of
7 returning a verdict.

8 Remember at all times, you are judges - judges of
9 the facts. Your duty is to decide whether the government has
10 proved the defendant guilty beyond a reasonable doubt.

11 When you go to the jury room, the first thing that
12 you should do is select one of your number as your foreperson,
13 who will help to guide your deliberations and will speak for
14 you here in the courtroom. A form of verdict has been
15 prepared for your convenience.

16 The foreperson will write the unanimous answer of
17 the jury in the space provided for each count of the
18 indictment, either guilty or not guilty. At the conclusion of
19 your deliberations, the foreperson should date and sign the
20 verdict.

21 If you need to communicate with me during your
22 deliberations, the foreperson should write the message and
23 give it to the courtroom security officer. I will either
24 reply in writing or bring you back into the court to answer
25 your message.

1 Bear in mind that you are never to reveal to any
2 person, not even to the Court, how the jury stands,
3 numerically or otherwise, on any count of the indictment,
4 until after you have reached a unanimous verdict.

5 With that, ladies and gentlemen, I am going to
6 recognize the attorneys' closing arguments. Again, what the
7 lawyers say is not evidence but, nevertheless, you should pay
8 close attention, because they are going to try to emphasize
9 points that they want you to continue deliberating about when
10 you get to your jury room.

11 And with that, the Court recognizes the government.

12 MS. BRAUN: Thank you, Your Honor.

13 Now I can see you all. Good morning.

14 Being a parent is an awesome responsibility. It is
15 also a great privilege. As parents, it is our duty, we take
16 on the duty to love and nurture and care for and teach and
17 protect our children, to protect them from harm.

18 Steven Mouton adopted this little girl when she was
19 only two years old and brought her here from China. By doing
20 so, he was supposed to protect her from harm, not be the harm
21 for her.

22 He had a duty to care for her and love her and to
23 nurture her into a wonderful young woman. And instead, from
24 the time she got here, he started taking pornographic pictures
25 of her. He told Sean Hiler, the CPS investigator, that he has

1 been taking pictures of her the whole ten and a half years she
2 was here.

3 He called them sexy times and sexy pictures, and he
4 was frustrated because Sean Hiler didn't understand the
5 emotional aspect of this case. He was just looking at the
6 legal aspect of this case.

7 I am going tell you, children are beautiful. They
8 are wonderful. I had my hard drive crash because I have so
9 many pictures of my children on it. They are not sexy. They
10 are not supposed to be sexy. He looked at this
11 two-and-a-half-year-old girl and saw sexy.

12 That turned into pornographic pictures, it turned
13 into touching her, and it culminated with Exhibit 30, which is
14 his penis in her vagina when she is only twelve years old. As
15 parents, we have a duty to protect our children from the evils
16 of this world. Steven Mouton used this child for his own
17 sexual gratification.

18 I am going to go through the elements of the offense
19 and show you why he is guilty of both counts. In order for
20 you to find him guilty of Count 1, which is sexual
21 exploitation of a child, the government has to prove three
22 things to you beyond a reasonable doubt, three things.

23 One, on -- in or around August of 2007, the
24 defendant knowingly used a minor to engage in sexually
25 explicit conduct; two, that he did so with the purpose of

1 producing a visual depiction of that conduct; and, three, that
2 the visual depiction was made with materials that had been
3 shipped or transported in interstate commerce.

4 Well, you heard a lot. The camera the defendant
5 says he used to take all of these pictures or most of the
6 pictures of Amanda made in Taiwan. Camera card, made in
7 China. Hard drive for the desktop computer, made in Malaysia.
8 Hard drive for the laptop computer made in Thailand.

9 Everything that was used to produce these images of
10 this little girl traveled in interstate and foreign commerce.
11 That has been proven beyond a reasonable doubt.

12 Second, the defendant did so with the purpose of
13 producing a visual depiction of such conduct. He told you so.
14 He told Sean Hiler so. These are sexy times, sexy pictures.
15 Yes, I took the pictures. He told Special Agent Baker: I
16 took the pictures. I made them. You know I made them. I
17 know I made them. I made them.

18 He just couldn't understand why everybody else
19 thought it was such a big deal. No doubt he made them. He
20 intended to take the pictures.

21 And the first element is that in August of '07
22 through October, he used this little girl to engage in
23 sexually explicit conduct.

24 Well, you have Amanda's birth certificate. In
25 August of 2007, when a lot of the pictures were taken, she was

1 twelve. I didn't show you the pictures of her, the series of
2 her on the green and white couch. She is younger in those,
3 under twelve. They will go back with you in the jury
4 deliberation room.

5 I know it is uncomfortable to look at the pictures,
6 no matter where you look at them, but if that will help your
7 deliberations, look at them. She is younger. There is the
8 series where she is in the cowboy hat and cowboy boots and the
9 brown leather belt, even a little younger. So she is a minor.

10 Most of the series that were taken at the 18 Crystal
11 Circle, Boerne house were taken between March and August of
12 2007. She was twelve. She turned twelve -- this is her
13 twelfth birthday party, I believe. She turned twelve February
14 16th of 2007. Pictures date from about March to then a bunch
15 of them are August of 2007.

16 And you have to find that the pictures depict her
17 being used in sexually explicit conduct. The other thing that
18 the Judge has instructed you on is -- well, back up.

19 Sexually explicit conduct. I won't show it to you
20 again. Exhibit 30 is the picture of his penis in a
21 twelve-year-old girl's vagina. That is sexual intercourse.
22 That is the definition of sexually explicit conduct. You
23 could all agree that picture taken in August of 2007 of Amanda
24 and that man meets the elements of production of child
25 pornography.

1 So he used a minor to engage in sexually explicit
2 conduct, did so with the purpose of producing a visual image.
3 He did. He produced a lot of visual images of it, and they
4 were produced with materials that had traveled in interstate
5 commerce.

6 The government has proven Count 1 beyond a
7 reasonable doubt. The physical evidence in this case proves
8 the elements beyond a reasonable doubt. You have both,
9 though.

10 You have all of the physical evidence in this case.
11 You heard from the forensic examiners and you heard from
12 Special Agent Baker, you can see the pictures, you can see the
13 metadata, you can look at the camera and the camera card, so
14 you have the physical evidence that proves the case.

15 You also heard what the defendant said, though. You
16 heard what he said to Special Agent Baker and to Investigator
17 Hiler, which is: Yes, I took the pictures. I took the
18 pictures and that is my penis in her vagina.

19 Count 1 has been proven beyond a reasonable doubt.

20 With regard to Count 2, in order for you to find him
21 guilty of Count 2, the government also needs to prove three
22 things beyond a reasonable doubt. One, that on or about
23 October of 2007, the defendant knowingly possessed a computer
24 which contained at least one visual depiction of child
25 pornography.

1 You heard that his computer contained 400 and some
2 images of child pornography. The desktop computer contained
3 ten, and the camera card contained a few more hundred.

4 The Judge has instructed you with regard to this
5 count, that you have heard evidence of more than one visual
6 depiction involving the offense. You must agree unanimously
7 as to which visual depiction the defendant possessed. You can
8 unanimously agree he possessed all of them on or about that
9 date.

10 Or you could make it even easier for yourself and
11 agree that he possessed -- I won't show it -- Exhibit 1.
12 Exhibit 1 is the picture that David Gonzales found when he
13 went to the defendant's house on October 18th, and there is a
14 vagina.

15 We know now from other pictures from the metadata
16 and from the defendant that that is his daughter's vagina, and
17 that he took that picture and that he took the picture in
18 August of 2007. That is the one that is still saved on his
19 computer, still saved to this day on his computer. So he
20 possessed a computer that contained at least one visual
21 depiction.

22 Two, he knew the visual depiction or visual
23 depictions were of a minor engaging in sexually explicit
24 conduct. He knew it. He took it. He meant to take it. He
25 liked it. These were sexy times. These were sexy pictures.

1 This provided sexual gratification for him.

2 Now, sexually explicit conduct has been defined for
3 you by the Judge. It includes sexual intercourse, as is
4 demonstrated vividly in Exhibit 30. It also constitutes the
5 lascivious display of the genitals, and the factors were read
6 to you.

7 I will give you that Exhibit 1 is a picture of a
8 vagina. A vagina takes up the entire picture. I mean, not
9 only is the focal point of the picture the vagina -- and if
10 you look at the other pictures, you will see that the focal
11 point of most of these is this little girl's private area.
12 But on Exhibit 1, the picture is the genital area. It takes
13 up the picture.

14 And, third, the visual depictions were produced
15 using materials that had been mailed, shipped and transported
16 in interstate or foreign commerce, again, every peace of media
17 in this case.

18 The laptop hard drive came from Thailand, the
19 computer came from Taiwan, and the media card came from China.
20 The government has proven every element beyond a reasonable
21 doubt.

22 You will hear that the defendant -- well, you have
23 heard that the defendant deleted all but one of the pictures.
24 You can find him guilty by agreeing on the one picture,
25 Exhibit 1, that he possessed. You can find that he possessed

1 all of them.

2 You can find him guilty of Count 1 based on
3 Exhibit 30, where he is penetrating her with his penis, but
4 don't forget that Mr. Mouton told Special Agent Baker he got a
5 call from Brooke Davis saying: Hey, just so you know, in the
6 near future, I am going to come out to your house.

7 October 16th, that was some time in the beginning of
8 October, October 16th, we can't tell from the computer hard
9 drive when those pictures were deleted. We can tell from the
10 camera card, though, that all of these pictures were deleted
11 on October 16th.

12 Oops. Someone is coming to my house. They are
13 going to look at my stuff. I am going to get rid of this.
14 And then two days later, probation showed up and found the one
15 picture that wasn't deleted.

16 Defendant not only produced all of these pictures,
17 he, over the years, he saved them and enjoyed them, and the
18 government has proven every element beyond a reasonable doubt,
19 and because of that, we ask that you find him guilty of both
20 producing child pornography and possessing child pornography.
21 Thank you.

22 THE COURT: Mr. Basile.

23 MR. BASILE: Yes, Your Honor.

24 Ladies and gentlemen of the jury, thank you for your
25 time in listening to what is a very, not very pleasant case to

1 listen to, and I just want to go over the instructions. And
2 if everybody remembers at voir dire, we talked about that the
3 Judge would instruct you on what the law is, and this is what
4 the Judge has done.

5 He has given you the law and you have agreed to
6 follow that and not allow anything else to come into your
7 decision. I just want to make sure you understand what the
8 law requires.

9 Of course, the U.S. Attorney just finished talking
10 about what they think is proved beyond a reasonable doubt, all
11 of the elements, and I want to make sure that you understand
12 what you are required to find in here.

13 As everybody knows sitting right now, there is a
14 presumption of innocence, and you heard the evidence, but at
15 this time, since you haven't deliberated, Mr. Mouton is
16 presumed to be innocent, and the only way he can be found not
17 to be innocent is by the evidence that was presented on the
18 witness stand, not by any other -- not by anything else, not
19 any thoughts that you have or any thought about -- or any
20 other information that is there.

21 So, again, the burden of proof is beyond a
22 reasonable doubt. As we talked about earlier, this is a real
23 high burden of proof that is to be met. It is not just in a
24 car wreck case, something like that, where you look at a
25 preponderance of the evidence, or even where someone's

1 parental rights are to be terminated to a child.

2 And you heard some testimony about that possibility
3 in this case. That, again, is an example of the burden of
4 proof that would be different. That is by what is called
5 clear and convincing evidence. This is the highest one of
6 all, which is beyond a reasonable doubt.

7 And the Court has given you the definition here to
8 use that says: Reasonable doubt is a doubt based upon reason
9 and common sense after careful and impartial consideration of
10 all the evidence in the case.

11 Proof beyond a reasonable doubt, therefore, is proof
12 of such a convincing character that you would be willing to
13 rely and act upon it without hesitation in the most important
14 of your own affairs.

15 So it would be something very important in your
16 life, say -- now everybody knows about what is going on with
17 the stock market or whatever. You can talk about investing
18 your money, what that is going to do for your retirement.

19 I would submit that it is a very, very important
20 decision. You want to make sure you know as much as possible
21 about that before you make a decision. I would submit that
22 would be something similar to that, and you can figure out
23 your own things which would be one of the most important
24 parts -- or important of your own affairs.

25 So let's go through some of the testimony and some

1 of the counts. Count 1 is, Mr. Mouton has been charged with
2 sexual exploitation of a child. And as you can see the counts
3 here that are required, that first, on or about August of 2007
4 through October of 2007, the dates in the indictment, and
5 those are the only dates that you are allowed to look at. Any
6 other information, any other pictures, any other evidence that
7 was presented on any dates outside of that are not for your
8 consideration.

9 You are to follow what the indictment says. The
10 indictment says between the dates of August 2007 and
11 October 2007.

12 So when you go back to look at the evidence, make
13 sure you keep your focus on what the indictment says. That is
14 what the charge was. The decision was made by the government
15 on how to charge him. That is their decision, and that is
16 what you are here to decide, whether the government has
17 actually proven the indictment that they have alleged.

18 As we know, the testimony was that when they came to
19 Mr. Mouton's house on October 18th, 2008, that after they took
20 his computer, seized his computer, they did some searching on
21 it, and there was testimony to the effect that images had been
22 found on his hard drive and the laptop.

23 We also know, through all of the witnesses of the
24 government, both of their computer experts and Agent Baker,
25 that all of those images had been deleted. Some of them, they

1 could say when. Some, they couldn't say. Some, they tried to
2 say it was done in October. Some, they couldn't say when they
3 were deleted. They were deleted years and years ago.

4 So those that were deleted years ago, before that,
5 are not to be considered by you, because they are not within
6 the time that is listed in the indictment. Again, focus on
7 what the Court has instructed you to do by doing that.

8 I would submit to you, ladies and gentlemen, that
9 there is no proof of anything during that time, because the
10 only picture that was there is the one picture of the girl
11 with the vagina, and you will get that there.

12 That is a picture of which, in itself, is not
13 sufficient to show sexual exploitation of a child. That is
14 just a picture taken of a child, and that is the only one that
15 they can honestly show or really show was still available in
16 October.

17 All of the other ones, as I said, have been deleted.
18 Whether they were deleted two years ago, six months ago or two
19 days before that, they were all deleted at that time.

20 So I would submit to you, ladies and gentlemen,
21 there is no proof that he employed, used, persuaded, induced,
22 enticed or coerced a minor, because they have not submitted to
23 you any proof.

24 They might say: Well, what about his statements
25 that he made? That is evidence.

1 Well, you heard the statements that came from the
2 agent, the FBI agent that came in, who picked him up and took
3 him to the room, supposedly read him his rights,
4 understanding, of course, that the questions were after
5 Mr. Mouton had turned himself in from his attorney's office,
6 and that he had a right, in his Miranda warnings, to have an
7 attorney present.

8 And you can look at the Miranda warnings, and you
9 can see what it says. They gave it to you in there, and you
10 can look at that. But his attorney was not present, so I
11 would submit to you that his testimony that he gave was not
12 voluntarily; he was not under the advice of counsel.

13 MS. BRAUN: I am going to object, Your Honor. This
14 is an improper argument.

15 THE COURT: Sustained. Ladies and gentlemen, you
16 are to disregard this portion of the closing.

17 MR. BASILE: Well, again, I would just ask you to
18 look at that, look at the warning that was given, and you can
19 make your own decision on that, whether it was or wasn't
20 voluntary.

21 Now, the purpose of -- the visual depiction was
22 done, as a second element that is required, and that it was
23 produced using materials that had been mailed, shipped or
24 transported in interstate commerce.

25 The only evidence presented about that was the

1 information on the computer, that I would submit that those,
2 as far as on here, that the first one, as far as the visual
3 depiction of the item, the first element has not been proven
4 under sexual exploitation of a child, and that is the Count
5 2251-A -- or the charge under 2251-A, which is under Count 1.
6 Because when we look at what is here, and how they decide or
7 what they talk about in the description of sexually explicit
8 conduct, it shows sexually explicit conduct is sexual
9 intercourse, including genital-genital, oral-genital,
10 anal-genital, oral -- oral-anal contact, whether between
11 persons of the same or opposite sex, bestiality, masturbation,
12 sadistic or masochistic abuse or the lascivious exhibition of
13 the genitals or pubic area of any person.

14 I would submit clearly that is not shown on the one
15 photograph, the only photogrpah that had not been deleted,
16 which, again, we will get back there.

17 The only question you would have to decide is
18 whether it is a lascivious exhibition of the genitals or pubic
19 area of any person. And the Court has given you a lot of
20 things to look at to try to decide that, and I will ask you to
21 read through those and make sure you understand what the Court
22 has instructed you before you make any decision.

23 This is not a decision that you want to rush to.
24 You want to take your time, read through that, look at that
25 one photograph and make sure. I would submit that it doesn't

1 meet all of the things required or most of the factors
2 required.

3 The only possible one would be whether the focal
4 point of the pictures on the minor's genitals or pubic area,
5 which, again, you need to look at yourself.

6 And Count 2, possession of child pornography.
7 Again, I would say that you need to make sure you understand
8 that this actually says on or about October 18th, the date
9 charged, 2007, which is the date that he was arrested or the
10 date they came to his house and seized his computers, that you
11 are to look at that date to see what, again, was on his
12 computer.

13 There was only one photograph that was accessible on
14 the computer. All of the other photographs had been deleted,
15 and you heard the testimony of the computer expert that once
16 they are deleted, they are not available to a person, unless
17 they have special software.

18 There was no evidence that any of that special
19 software was anywhere in the house, so those pictures that
20 were deleted were not available to anybody else. The only
21 picture that was available was the one picture that was on the
22 computer, again, which is the same one I discussed.

23 So I will tell you that that one picture, again,
24 possession of child pornography, you use the same definitions
25 above, and I would suggest to you that this doesn't meet the

1 definition of that and it should be found not true or not
2 guilty.

3 So after reading over the charge, going through the
4 charge and making sure you understand the law, I ask you to
5 come back on both counts with a verdict of not guilty.

6 Thank you.

7 THE COURT: Thank you, Mr. Basile.

8 Ms. Wannarka.

9 MS. WANNARKA: Thank you, Your Honor.

10 Ladies and gentlemen, when the defendant hit click
11 on the camera, he produced child pornography. When he put his
12 penis in her vagina and hit click, Count 1 is checked. You
13 don't have to save the picture. You don't have to transport
14 it. You don't have to do anything with it. After click, it
15 is produced.

16 He did save one of them. He saved Government's
17 Exhibit 1. This is a production of child pornography. This
18 isn't the penetration picture, as is Government's Exhibit 30,
19 but it is a lascivious exhibition of her genitals, and to say
20 that this is not sexually explicit is nothing short of
21 ridiculous.

22 This is a little girl's genitalia displayed for the
23 defendant's sexual interests. That is lascivious. When the
24 defendant met with Special Agent Baker, he was given his
25 Miranda warnings and was given an opportunity to discuss them,

1 was given them in writing and orally. And as you saw in
2 Government's Exhibit 26, he knowingly and voluntarily waived
3 those rights. That is not an issue that we believe is viable
4 in the very least.

5 When the defendant raped his daughter and took a
6 picture of it and did download it to his computer -- maybe
7 deleted them, didn't delete all of them, it doesn't matter.
8 He was essentially celebrating the sexual conquest of a little
9 girl.

10 He was celebrating his dominance over the most
11 vulnerable, someone that he brought here at two. Did she
12 speak any English? But she did have pictures taken of her
13 sexually. That was what she knew of life in our United
14 States. That is what she was raised to believe is a term of
15 endearment, is a term of love.

16 Amanda Mouton will have a good life and she will
17 grow up and have a good life, but it will not be because of
18 the defendant. It will be despite the defendant. We ask that
19 you find him guilty of both counts. Thank you.

20 THE COURT: Ladies and gentlemen of the jury, there
21 are thirteen of you. Under the rules, I am only allowed to
22 send back twelve. I chose an alternate juror in the event
23 that someone became ill or otherwise was unable to serve.

24 Mr. Alexandria, you are the alternate juror.

25 JUROR: Okay.

1 THE COURT: I can't send you back. But what I am
2 going to do is, I want to -- I am going to have Ms. Greenup
3 escort you down to the library. I am going to ask that you
4 remain for a little while to determine whether or not -- I
5 have had this happen before, where I think I mentioned before
6 that one of the jurors was unable to understand what was going
7 on.

8 I don't want to have a mistrial, considering that we
9 finished this trial, so I am going to segregate you and I am
10 going to put you downstairs in the library. At this point,
11 you can't have any interaction with anyone else. Don't
12 discuss this case with anyone else. Don't speak to anybody
13 else. If you can just find something to read down there for a
14 little bit.

15 I will notify you, one, whether I will need you back
16 up here or, two, when I can let you go home. I will certainly
17 let you know when your lunch gets here. But if you will
18 follow Ms. Greenup. Thank you.

19 To the remaining twelve of you, I am going to send
20 you now back to the jury deliberation room. The first thing
21 you ought to do is choose one of your number to serve as your
22 foreperson.

23 You have only known each other for two days, so it
24 is a limited time to really know anybody, but I would suggest
25 to you all select as your foreperson somebody who will allow

1 everybody their fair share in speaking, and so that will be
2 your first task.

3 In just a little bit, we will assemble the evidence
4 and take that into the jury deliberation room for your review.
5 And otherwise, we await your verdict.

6 All rise.

7 (Jury leaves courtroom.)

8 THE COURT: Please be seated.

9 With regard to the exhibits that were admitted in
10 the trial in this case, the government did not ask that they
11 be sealed, but the Court, nevertheless, considering the
12 private nature of the various photos and information, the
13 Court orders that all exhibits tendered into evidence in this
14 case be sealed and only be made available for trial and/or
15 appellate review, so all documents are sealed.

16 This was the Court's copy of the exhibits. I return
17 these back to the government.

18 I am going to allow the lawyers to go out to lunch.
19 I would ask that you be back in the courtroom by 1:00 o'clock,
20 in the event we receive any instructions from the jury.

21 Anything further?

22 MS. BRAUN: No, Your Honor. We have the exhibits
23 put together, and we will give them to Ms. Greenup when she
24 returns.

25 THE COURT: Anything further?

1 MR. BASILE: No, Your Honor.

2 THE COURT: We will see you back at 1:00.

3 (Recess to 1:26 p.m.)

4 THE COURT: Ladies and gentlemen, it is my
5 understanding you have reached a verdict; is that correct?

6 JUROR: Yes.

7 THE COURT: And who is the foreperson? If you will
8 pass the note to the courtroom security officer.

9 The verdict is in proper form.

10 Ladies and gentlemen, I will read the verdict now.
11 I would ask you to listen carefully to my reading, because
12 after the end of my reading, one or more of the lawyers may
13 ask to question you all individually as to whether or not this
14 is your verdict.

15 On Count 1, we, the jury, find the defendant, Steven
16 Lynn Mouton, guilty.

17 On Count 2, we, the jury, find the defendant, Steven
18 Lynn Mouton, guilty. Signed and dated.

19 Does anybody want the jury polled from the
20 government?

21 MS. BRAUN: No, Your Honor. Thank you.

22 THE COURT: Defense?

23 MR. BASILE: Yes, Your Honor. I would like to have
24 the jury polled.

25 THE COURT: Ms. Greenup, if you will poll the jury.

1 COURTROOM DEPUTY: As I call your name, would you
2 please answer yes or no to the question. The question to each
3 of you is this: Is this your verdict?

4 Marcella Helmke?

5 JUROR: Yes.

6 COURTROOM DEPUTY: Edward Onofre?

7 JUROR: Yes.

8 COURTROOM DEPUTY: Gabriel Jasso?

9 JUROR: Yes.

10 COURTROOM DEPUTY: Cynthia Carrasco?

11 JUROR: Yes.

12 COURTROOM DEPUTY: Michael Verstuyft?

13 JUROR: Yes.

14 COURTROOM DEPUTY: Dugald Winter?

15 JUROR: Yes.

16 COURTROOM DEPUTY: Anna Counts?

17 JUROR: Yes.

18 COURTROOM DEPUTY: Martha Nelson?

19 JUROR: Yes.

20 COURTROOM DEPUTY: John Gidcumb?

21 JUROR: Yes.

22 COURTROOM DEPUTY: Julianne Damore?

23 JUROR: Yes.

24 COURTROOM DEPUTY: Joan Michaud?

25 JUROR: Yes.

1 COURTROOM DEPUTY: Marcus Cantu?

2 JUROR: Yes.

3 THE COURT: The verdict is proper.

4 Ladies and gentlemen, I would like to thank you for
5 your service, on behalf of my colleagues and I here in the
6 Western District of Texas. I have got to take up just a
7 couple of matters here and, otherwise, I am going send you
8 back to the jury deliberation room.

9 If you will wait for me just a couple of minutes, I
10 would like to thank you individually and answer any questions
11 that you might have.

12 All rise for jury.

13 (Jury leaves courtroom.)

14 THE COURT: Please be seated.

15 Mr. Mouton, having been found by the jury guilty on
16 both counts, I will proceed to sentencing you on Wednesday,
17 January the 13th, 2010 at 1:30 in the afternoon.

18 I am going to refer your matter to the probation
19 office. At this point, a probation officer will prepare a
20 report that I will use in sentencing you. As a part of that
21 report process, the probation officer will likely want to
22 interview you.

23 You have the right to have an attorney present
24 during any interview. Once the report is completed, a copy
25 will be given to your lawyer. You and he can review that

1 report. If there is anything wrong with that report, your
2 lawyer can file objections to the report.

3 I will entertain any objections to the presentence
4 report on the same day that I sentence you, and that is,
5 again, Wednesday, January the 13th.

6 Anything further from the government?

7 MS. BRAUN: No, Your Honor. Thank you.

8 THE COURT: From the defense?

9 MR. BASILE: No, Your Honor.

10 THE COURT: And with that, we are adjourned.

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1 *-*-*-*-*-*-*-*

2 UNITED STATES DISTRICT COURT)

3 WESTERN DISTRICT OF TEXAS)

4 I certify that the foregoing is a correct transcript
5 from the record of proceedings in the above-entitled matter.

6 I further certify that the transcript fees and format comply
7 with those prescribed by the Court and the Judicial Conference
8 of the United States.

9 Date signed: April 26, 2010.

10
11 /s/ Karl H. Myers

12 _____
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